FILE COPY

Office - Supreme Court, U. S.
FILED
APR 21 1947
CHARLES ELMORE CROPLEY
CLERK

No. 35

In the Supreme Court of the United States

OCTOBER TERM, 1946

TOM C. CLARK, ATTORNEY GENERAL, AS SUCCESSOR TO THE ALIEN PROPERTY CUSTODIAN, PETITIONER

v.

UEBERSEE FINANZ-KORPORATION, A. G.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE PETITIONER

INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statutes involved	2
Statement	3
Specification of errors to be urged	4
Summary of argument	5
Argument	7
I. Section 5 (b) of the Trading With the Enemy Act confers upon the United States the power not only to vest but also to retain and use any foreign property	9
A. The text of the statute and its purposes	9
B. The legislative history	18
C. Misconceptions underlying the denial of this construction by the court below	28
D. Administrative construction of the powers conferred by Section 5 (b)	31
II. Section 9 (a) of the Act does not authorize the recovery of property of a foreign national which the Custodian was empowered to vest, retain, and use	33
III. As thus construed, the Act is constitutional	54
IV. The Act in no way conflicts with the Treaty of 1850 with Switzerland	63
Conclusion	68
Appendix A, Statutes and Executive orders	69
Appendix B, Treaty with Switzerland	91
Appendix C, Vesting orders	95

CITATIONS

Cases:	
Application of Alien Property Custodian of U. S., 60 N. Y. S. 2d 897	41
Bank of Augusta v. *Earle*, 13 Pet. 519	65
Becker Steel Co. v. *Cummings*, 296 U. S. 74	55
Becker Steel Co. v. *Cummings*, 95 F. 2d 319, certiorari denied, 305 U. S. 601	60
Behn, Meyer & Co. v. *Miller*, 266 U. S. 457	16, 40, 53
Blake v. *McClung*, 172 U. S. 239	65
Brassert v. *Markham*, D. Conn., November 21, 1946	43
British-American Tobacco Co. v. *Federal Reserve Bank*, 104 F. 2d 652, 105 F. 2d 935	25

Cases—Continued

	Page
Campbell v. *Chase Nat. Bank*, 71 F. 2d 669, appeal dismissed, 291 U. S. 686, certiorari denied, 293 U. S. 592	25
Central Union Trust Co. v. *Garvan*, 254 U. S. 554	39, 40, 46
Commercial Trust Co. v. *Miller*, 262 U. S. 51	39, 47
Cummings v. *Deutsche Bank*, 300 U. S. 115	30, 55, 56
Draeger Shipping Co. v. *Crowley*, 49 F. Supp. 215, 55 F. Supp. 906	43, 67
Duisberg v. *Crowley*, 54 F. Supp. 365	43
Duisberg v. *Markham*, 149 F. 2d 812, certiorari denied, 326 U. S. 759	43
Escher v. *United States*, 68 Ct. Cls. 473, certiorari denied, 281 U. S. 752	60
Factor v. *Laubenheimer*, 290 U. S. 276	65
Fong Yue Ting v. *United States*, 149 U. S. 698	66
Garvan v. *Commercial Trust Co.*, 275 Fed. 841, affirmed *sub nom. Commercial Trust Co.* v. *Miller*, 281 Fed. 804, affirmed, 262 U. S. 51	46
Gemsco, Inc. v. *Walling*, 324 U. S. 244	50, 62
Hague v. *Committee for Industrial Organization*, 307 U. S. 496	65
Hamburg-American Co. v. *United States*, 277 U. S. 138	16
Hayden v. *Crowley*, W. D. Wash., May 10, 1944, rehearing, July 10, 1944	43
Helvering v. *Hallock*, 309 U. S. 106	50
Hemphill v. *Orloff*, 277 U. S. 537	65
Higgins v. *Smith*, 308 U. S. 473	50
Hurley v. *Kincaid*, 285 U. S. 95	55
Iki v. *Crowley*, W. D. Wash., May 10, 1944, rehearing, July 10, 1944	42
Instant Index Corp. v. *Tribunal of the Canton of Vaud*, 60 Entscheidungen des Schweizerischen Bundesgerichts, I, p. 220 (1934), Annual Digest and Reports of Public International Law Cases, 1933–34 (1940), pp. 307–309	66
Josephberg v. *Markham*, 152 F. 2d 644	43
Junkers v. *Chemical Foundation*, 287 Fed. 597	66
Kind v. *Clark*, C. C. A. 2, April 9, 1947	43
Klotz, Matter of Leopold H. P., May 2, 1944, Office of the Alien Property Custodian, Final Determinations of the Vested Property Claims Committee, December, 1943, to March, 1946, p. 108	32
Maiorano v. *Baltimore & Ohio R. R. Co.*, 213 U. S. 268	65, 67
Markham v. *Cabell*, 326 U. S. 404	6, 33, 34, 38
Neuberger v. *Commissioner*, 311 U. S. 83	31
Norman v. *Baltimore & Ohio R. Co.*, 294 U. S. 240	25
Peoples Natural Gas Co. v. *Federal Power Commission*, 127 F. 2d 153, certiorari denied, 316 U. S. 700	31
Pflueger v. *United States*, 121 F. 2d 732, certiorari denied, 314 U. S. 617	60

Cases—Continued Page

Pigeon River Co. v. *Cox Co.*, 291 U. S. 138 66
Russian Volunteer Fleet v. *United States*, 282 U. S. 481 54
Sanchez v. *United States*, 216 U. S. 167 66
Sigg-Fehr v. *White*, 285 Fed. 949 59, 60, 61
Silesian-American Corp. v. *Markham*, 156 F. 2d 793, certiorari granted, February 17, 1947, No. 346, this term 43, 54, 60
Standard Oil Co. (N. J.) v. *Markham*, 64 F. Supp. 656 43
State ex rel. Tanner v. *Staeheli*, 112 Wash. 344, 192, p. 991 66
Stern v. *Newton*, 180 Misc. 241, 39 N. Y. S. 2d 593 41
Stoehr v. *Wallace*, 255 U. S. 239 39, 40, 46, 47, 66
Sullivan v. *Kidd*, 254 U. S. 433 65
Uebersee Finanz-Korporation, Etc. v. *Rosen*, 83 F. 2d 225 25
United States v. *The Antoinetta*, 153 F. 2d 138, certiorari denied, 328 U. S. 863 41
United States v. *Claflin*, 97 U. S. 546 37
United States v. *Fisher*, 109 U. S. 143 35
United States v. *Great Falls Mfg. Co.*, 112 U. S. 645 55
United States v. *Jackson*, 302 U. S. 628 35
United States v. *Lowden*, 308 U. S. 225 31, 50
United States v. *Palmer*, 128 U. S. 262 55
United States v. *Powers*, 307 U. S. 214 62
United States v. *Tynen*, 11 Wall. 88 35
United States v. *Yuginovich*, 256 U. S. 450 35
Valk v. *United States*, 29 Ct. Cls. 62, affirmed, 168 U. S. 703 67
Yakus v. *United States*, 321 U. S. 414 46
Yearsley v. *Ross Construction Co.*, 309 U. S. 18 55

Constitutional provisions, statutes, treaties, and executive orders:

Constitution of the United States:
Article IV, Section 2 65
14th Amendment, Section 1 65
Emergency Banking Act of March 9, 1933, 48 Stat. 1 25
First War Powers Act, 1941, c. 593, 55 Stat. 838, 50 U. S. C. App. (Supp. V) 5 (b) 5, 8, 13, 35, 36, 62
Joint Resolution of May 7, 1940, 54 Stat. 179 11, 12
Pub. L. No. 322, 79th Cong., 2d Sess., March 8, 1946 30, 52, 55
Pub. L. No. 671, 79th Cong., 2d Sess., August 8, 1946 48
Trading With the Enemy Act, October 6, 1917, 40 Stat. 411, as amended, 50 U. S. C. App. 1, *et seq.*:
Section 2 7, 69
Section 5 (b) 2, 5, 8, 9, 11, 34, 41, 45, 48, 58, 62, 63, 70
Section 7 (c) 6, 7, 11, 39, 46, 56, 57, 58, 61, 72
Section 9 (a) 2, 6, 34, 38, 39, 41, 42, 57, 58, 61, 73
Section 12 29
Section 32 52, 74
Tucker Act, Judicial Code, §§ 24 (20), 145 (1); 28 U. S. C. 41 (20), 250 (1) 55, 79

Constitutional provisions, statutes, treaties, and executive orders—Continued — Page

Treaty of 1800 with France, 8 Stat. 180, 182 — 66
Treaty of Friendship, Commerce, and Extradition between the United States and Switzerland, November 25, 1850, 11 Stat. 587 — 63, 64, 66, 91
Executive Order No. 8389, April 10, 1940, 5 F. R. 1400 — 12, 16
Executive Order No. 8785, June 14, 1941, 6 F. R. 2897 — 4, 13, 53, 67, 79
Executive Order No. 8832, July 26, 1941, 6 F. R. 3715 — 13, 79
Executive Order No. 9095, March 11, 1942, 7 F. R. 1971 — 3, 82
Executive Order No. 9193, July 6, 1942, 7 F. R. 5205 — 3, 4, 16, 83
Executive Order No. 9725, May 16, 1946, 11 F. R. 5381 — 30
Executive Order No. 9788, October 14, 1946, 11 F. R. 11981 — 3

Miscellaneous:
Annual Report, Office of Alien Property Custodian, March 11, 1942, to June 30, 1943 — 21, 47
Annual Report, Office of Alien Property Custodian, Fiscal Year Ending June 30, 1944 — 29
Annual Report, Office of Alien Property Custodian, Fiscal Year Ending June 1945 — 30
87 Cong. Rec. 9704, 9706, 9753, 9789, 9801, 9828, 9837–46, 9855–68, 9893–5, 9946–47 — 35, 36
87 Cong. Rec. 9838 — 21, 27
87 Cong. Rec. 9845 — 22
87 Cong. Rec. 9856 — 23, 26
87 Cong. Rec. 9859 — 24, 26
87 Cong. Rec. 9861 — 23
87 Cong. Rec. 9862, 9865, 9866 — 22, 23, 24, 26, 37
87 Cong. Rec. 9946 — 24
92 Cong. Rec. 10217–18 — 49, 50, 51
Divesting Order No. 93 — 33
III Hackworth, *Digest of International Law*, pp. 431–432 — 65, 92
Hearings before Subcommittee No. 1 of the House Committee on the Judiciary, 78th Cong., 2d Sess., on H. R. 4840 — 51
Hearings before Subcommittee No. 1 of the House Committee on the Judiciary, 79th Cong., 1st Sess., on H. R. 3750 — 51
Hearings before a Subcommittee of the Senate Committee on Military Affairs (Kilgore Committee), 79th Cong., 1st Sess., pursuant to S. Res. 107 and S. Res. 146, June–December 1945 — 15
Hearings before Subcommittee No. 1 of the House Committee on the Judiciary, 79th Cong., 2d Sess., on H. R. 5089 — 51
H. R. 6206, 77th Cong., 1st Sess — 35
H. R. 6233, 77th Cong., 1st Sess — 36

Miscellaneous—Continued Page
H. R. 4840, 78th Cong., 2d Sess. 48
H. R. 5031, 78th Cong., 2d Sess. 48
H. R. 5089, 79th Cong., 1st Sess. 48
H. R. 6890, 79th Cong., 2d Sess. 48, 50
H. Rep. No. 1507, 77th Cong., 1st Sess. 18, 20, 36, 46
H. Rep. No. 1269, 79th Cong., 1st Sess. 52, 53
H. Rep. No. 2398, 79th Cong., 2d Sess. 15, 29, 48, 49
5 Miller, *Treaties and Other International Acts of the United States of America*, 887 66
S. 2118, 77th Cong., 1st Sess. 35
S. 2129, 77th Cong., 1st Sess. 36
S. 2378, 79th Cong., 2d Sess. 47
S. Rep. No. 911, 77th Cong., 1st Sess. 21
S. Rep. No. 920, 79th Cong., 2d Sess. 52
S. Rep. No. 1839, 79th Cong., 2d Sess. 49
United States Treasury Department, *Administration of the Wartime Financial and Property Controls of the United States Government* (1942) 15
Vesting Orders:
No. 14 95
Amendatory and supplemental order No. 1 to Vesting Order No. 14 29, 96
No. 17 101
Amendment of Vesting Order No. 17 103
No. 18 104
No. 19 106
No. 36 107
No. 51 109
No. 1036 32
No. 1040 32
No. 1052 32
No. 1218 32
No. 1250 32
No. 1409 32
No. 1587 32
No. 1636 32
No. 2097 32
No. 2263 32
No. 2350 32
No. 2643 32
No. 2692 32
No. 2883 32
No. 3056 32
No. 3266 32
No. 3267 32
No. 3684 32
No. 3695 32

In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 934

TOM C. CLARK, ATTORNEY GENERAL, AS SUCCESSOR TO THE ALIEN PROPERTY CUSTODIAN, PETITIONER

v.

UEBERSEE FINANZ-KORPORATION, A. G.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE PETITIONER

OPINION BELOW

The opinion of the Court of Appeals for the District of Columbia (R. 7) is reported at 158 F. 2d 313. There was no opinion by the district court.

JURISDICTION

The judgment of the Court of Appeals for the District of Columbia was entered on October 21, 1946 (R. 11–12). The petition for a writ of certiorari was filed on January 20, 1947, and was granted on February 17, 1947 (R. 12). The jurisdiction of this Court rests on Section 240 (a)

of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Section 5 (b) of the Trading With the Enemy Act, as amended by the First War Powers Act, 1941, provides that the President or his appointee may vest the property of "any foreign country or national thereof," and that such property may be "held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States." Section 9 (*a*) of the Trading With the Enemy Act provides that "any person not an enemy or ally of enemy claiming any interest, right, or title" in property held by the Alien Property Custodian may bring suit in equity in any district court of the United States for the return of vested property; the court is authorized to direct the return only of the property or interest "to which the court shall determine said claimant is entitled."

The question presented is whether the Act as amended by the First War Powers Act, 1941, permits a foreign national, not an enemy or ally of enemy, whose property has been vested under Section 5 (b), to obtain, in a proceeding under Section 9 (a), a judgment requiring the return of such property.

STATUTES INVOLVED

The relevant provisions of the Trading With the Enemy Act, as amended by the First War

Powers Act, 1941, are set forth in Appendix A, *infra*, pp. 68–77.

STATEMENT

By a series of vesting orders issued in June and July, 1942, the Alien Property Custodian[1] vested in himself certain shares of stock and interests in contracts.[2] On October 25, 1944, Uebersee Finanz-Korporation, A. G., filed a complaint in the District Court for the District of Columbia, asserting that at the time of vesting it was the owner of the vested properties and praying that the Custodian be directed to return them (R. 1). The complaint alleged that the plaintiff was a corporation organized under the laws of Switzerland and a citizen of Switzerland; it denied that the plaintiff was either an "enemy," "ally of enemy," or "national of a designated enemy country" within the meaning of the Trading With the Enemy Act or Executive Orders

[1] The Office of Alien Property Custodian was created and authority to exercise powers under the Trading With the Enemy Act, as amended, were conferred upon the Custodian by Executive Order No. 9095, March 11, 1942, 7 F. R. 1971, later amended by Executive Order No. 9193, July 6, 1942, 7 F. R. 5205. See Appendix A, *infra*, pp. 82–90. By Executive Order No. 9788, October 14, 1946, 11 F. R. 11981, the authority, rights, privileges, and powers of the Alien Property Custodian and of the Office of Alien Property Custodian were transferred to the Attorney General. In this brief, we shall use the term "Custodian" interchangeably to refer to the former Alien Property Custodian and to the Attorney General as successor to the Alien Property Custodian.

[2] The vesting orders are set out in Appendix C, *infra*, pp. 95–111.

issued pursuant to it (R. 3–4). The defendant moved to dismiss the complaint on the ground that it showed on its face that the plaintiff was a national of a foreign country, whose property the Alien Property Custodian was authorized to vest by Section 5 (b) of the Trading With the Enemy Act, as amended (R. 4).[3] The district court granted the motion and dismissed the action (R. 5). The Court of Appeals for the District of Columbia, one judge dissenting, reversed and remanded the cause for trial, holding that Section 5 (b) did not authorize the retention of property of foreign nationals, but merely the initial vesting of such property subject to a duty to return upon suit by anyone not an enemy or ally of enemy, and that unless Section 5 (b) were so construed "grave doubts as to the constitutionality of the law" would arise (R. 7–11).

SPECIFICATION OF ERRORS TO BE URGED

The Court of Appeals for the District of Columbia erred:

---

[3] Executive Order No. 8785, June 14, 1941, 6 F. R. 2897, designates Switzerland as a "foreign country" within the meaning of Section 5 (b) (Section 3 (j)), and defines "national" as including "any partnership, association, corporation or other organization, organized under the laws of, or which on or since the effective date of this Order had or has had its principal place of business in such foreign country" (Section 5E (ii)). By Section 10 of Executive Order No. 9193, July 6, 1942, 7 F. R. 5205, those definitions are made applicable to the vesting of property of foreign nationals by the Custodian.

1. In holding that Section 5 (b) of the Trading With the Enemy Act, as amended, did not authorize the retention and use in the interest of the United States of property of a national of a foreign country vested by the Alien Property Custodian;

2. In holding that the amendments made to Section 5 (b) by the First War Powers Act, 1941, were designed merely to eliminate the procedural requirements of an investigation and finding of enemy ownership as a preliminary to seizure, and had no substantive effect on the type of property subjected to seizure and retention;

3. In holding that a foreign national whose property has been vested might not bring a suit for just compensation and thereby secure full protection of any constitutional rights;

4. In reversing the judgment of the district court.

SUMMARY OF ARGUMENT

The First War Powers Act, 1941, by amendment to Section 5 (b) of the Trading With the Enemy Act, confers the power to vest "any property or interest of any foreign country or national thereof" and directs that "such interest or property" shall be held and used in the interest of, and for the benefit of, the United States. The text of this provision, its statutory setting, and its legislative history make it abundantly clear that Congress thereby conferred the power to take and to use in the interest of the United States

all foreign property and not merely enemy property. To allow a foreign national to compel the return of property which Congress has directed should be held and used in the national interest would not only defeat the purposes of the First War Powers Act, 1941, but would nullify its express terms.

It is settled that Section 5 (b) as thus amended should be read with the older provisions of the Trading With the Enemy Act "as parts of an integrated whole" to the extent that this can be done without defeating the purposes of the later enactment. *Markham* v. *Cabell*, 326 U. S. 404, 411. But we know of no principle of statutory construction which warranted the action of the court below in so applying the older provisions of the statute as to render ineffective the powers expressly granted by the later Congressional enactment. In any event, however, nothing in the provisions of Sections 9 (a) and 7 (c) of the Act, on which the court below relied, requires the result which the court reached. Read with textual precision and in the light of its historic function in the scheme of the Trading With the Enemy Act, neither provision interposes any obstacle to the construction of the Act, as amended in 1941, as denying to foreign nationals the right to recover vested property by suit under Section 9 (a) and as leaving available to such nationals the traditional remedy of a suit against the United States for the vindication of any consti-

tutional rights they may have to just compensation. As thus construed, the Act is plainly constitutional.

The construction advanced by the Custodian would not, as the respondent argued below, be inconsistent with the Treaty of 1850 with Switzerland. The treaty provisions relevant here have no application to the respondent since it is a corporation; but, in any event, the statutory and constitutional rights available to non-enemy foreign nationals fully satisfy the requirements of the treaty wherever applicable.

ARGUMENT

As it existed during World War I, Section 7 (c) of the Trading With the Enemy Act, 40 Stat. 411, as amended, 50 U. S. C. App. 1., *et seq.*, authorized the seizure of property of "an enemy or ally of enemy."[4] It further provided that "the sole relief and remedy of any person having any claim to any money or other property" transferred to or seized by the Custodian "shall be that provided by the terms of this Act." Section 9 (a) of the Act authorized "any person not an enemy or ally of enemy" to bring a suit in equity to "establish any right, title or interest which he may have" in any property held by the Alien Property Custodian. If the claimant established such an interest, the court was directed to

[4] Those terms are defined in Section 2 of the Act, Appendix A, *infra*, pp. 69–70.

order the payment or transfer to him of the "money or other property * * * or the interest therein to which the court shall determine said claimant is entitled."

By the First War Powers Act, c. 593, 55 Stat. 838, 50 U. S. C. App. (Supp. V) 5 (b), enacted on December 18, 1941, Congress amended Section 5 (b) of the Trading With the Enemy Act, so as to authorize the vesting of "any property or interest *of any foreign country or national thereof*" [italics supplied] and provided that the property so vested should be "held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States." This enlargement of the type of property subject to the vesting power from "enemy" property to "foreign" property was accompanied by no amendments addressed to the remedies provided by the Act, Congress leaving Sections 7 (c) and 9 (a) unchanged.

On the pleadings, it is admitted that the respondent is a "national" of a "foreign country" as those terms have been defined pursuant to Section 5 (b). The case thus presents the single issue whether, in view of the express grant to the Executive by the First War Powers Act, 1941, of power to vest, retain, and use the property of any national of a foreign country, one who is such a national of a foreign country may recover vested property by suit under Section 9 (a). We submit that to allow recovery in such a case, as the court

below has done, would nullify the broad powers which Congress conferred by the First War Powers Act.

I

SECTION 5 (b) OF THE TRADING WITH THE ENEMY ACT CONFERS UPON THE UNITED STATES THE POWER NOT ONLY TO VEST BUT ALSO TO RETAIN AND USE ANY FOREIGN PROPERTY

A. *The text of the statute and its purposes.*— The text of Section 5 (b) (1) of the Trading With the Enemy Act, as amended by Section 301 of the First War Powers Act, 1941,[5] is explicit and unambiguous. It confers upon the Executive four major groups of powers:

> (a) regulatory powers with respect to foreign exchange, banking transfers, coin, bullion, currency, and securities;
>
> (b) regulatory powers with respect to "any property in which any foreign country or a national thereof has any interest";
>
> (c) the power to vest "any property or interest of any foreign country or national thereof"; and
>
> (d) the powers to hold, use, administer, liquidate, sell, or otherwise deal with "such interest or property" in the interest of and for the benefit of the United States.

[5] Section 5 (b) (1), as thus amended, provides in material part:

"During the time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise—

With the exception of the first group of regulatory powers, which is in terms applicable without regard to the nationality of the persons involved, all of the provisions of Section 5 (b) relate to property of any foreign country or national. The second group of regulatory powers and the vesting power are expressly applicable to all foreign property, and it is impossible as a matter of grammar to read the power to hold, use, or otherwise deal with "*such* interest or property," as comprehending any narrower range of property than the vesting power.

"(A) investigate, regulate, or prohibit, any transactions in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin or bullion, currency or securities, and

"(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest,

by any person, or with respect to any property, subject to the jurisdiction of the United States; and any property or interest of any foreign country or national thereof shall vest, when, as, and upon the terms, directed by the President, in such agency or person as may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes; * * *"

In this use, in Section 5 (b), of the phrase "any property or interest of any foreign country or national thereof," there is a significant contrast to the references to "enemy" property in other provisions of the Trading With the Enemy Act. During World War I, seizure of property by the Alien Property Custodian had been governed by Section 7 (c), applicable to property of "enemies" and "allies of enemies," terms which were defined in detail in Section 2 of the Act. See Appendix A, *infra*, pp. 69–70. Hence, when, a few days after our entry into World War II, Congress addressed itself to the problem of authorizing seizure and use of foreign property in the interest of the United States, there was in existence an established statutory vocabulary which would presumably have been used again if Congress had desired to enact powers of like scope for World War II.

The starting point which was adopted for the new legislation, however, was Section 5 (b). That Section, as originally enacted in 1917, conferred regulatory powers over certain transactions "between the United States and *any foreign country, whether enemy, ally of enemy or otherwise*; or between residents of one or more foreign countries." 40 Stat. 415. (Italics supplied.) By the Joint Resolution of May 7, 1940, 54 Stat. 179, it had been amended to confer a broad range of regulatory powers over property "in which

any foreign state[6] *or a national or political subdivision thereof,* as defined by the President, has any interest." (Italics supplied.) As amended, it had become the basis of that extensive system of controls over foreign funds known as the freezing program, which was being actively enforced by the Treasury Department at the time the First War Powers Act was enacted.

Freezing of foreign funds had been instituted under the authority of Executive Order No. 8389 (5 F. R. 1400) issued on April 10, 1940, two days after Germany's invasion of Denmark and Norway. The Order subjected to licensing controls all transactions involving funds in the United States "in which Norway or Denmark or any national thereof has * * * any interest," thereby preventing Germany from forcing the government and inhabitants of the invaded territory to transfer funds in the United States in furtherance of German interests. In brief, freezing did not change the ownership of the funds affected, but merely prohibited any transfer without a license from the Treasury and rendered any unlicensed transfer void. By the Joint Resolution of May 7, 1940, Congress ratified Executive Order No. 8389 and the regulations issued under it, and enlarged the regulatory powers conferred by Section 5 (b). Under this statutory grant, the application of the freezing controls was

[6] That the Resolution used the phrase "foreign state" instead of "foreign country" is plainly of no significance.

successively extended by executive order to the property of additional foreign countries and their nationals. By July 26, 1941, thirty-two foreign countries and their nationals, comprising all of continental Europe as well as China and Japan, and thus including the Axis powers, invaded countries, and neutrals, and in particular Switzerland, were specifically subjected to the freezing controls. Executive Order No. 8785, June 14, 1941, 6 F. R. 2897, as amended by Executive Order No. 8832, July 26, 1941, 6 F. R. 3715.

Hence, in December, 1941, when Congress cast the powers to vest, retain, and use property in the mold of Section 5 (b), it was plainly legislating with respect to all foreign property. The amendments effected by the First War Powers Act, 1941, added to Section 5 (b) of the Trading With the Enemy Act in two major respects. They very substantially enlarged the existing regulatory powers over property of "any foreign country or a national thereof" and, in the same terms, they conferred the powers to vest and retain and use "any property or interest of any foreign country or national thereof." There is plainly no reason to suppose that upon the outbreak of war, Congress determined to limit the applicability of the regulatory powers to a more narrowly defined range of property than that to which they had extended while the United States was at peace. By framing the powers to vest, retain, and use foreign property as additions to

the same sentence in which those regulatory powers were conferred, and by using the identical phrase—"foreign country or national thereof"—to define the extent of their applicability, Congress left no room for doubt that the powers to vest, retain, and use were to be co-extensive with the regulatory powers and were to be available for application as deemed necessary to all foreign property.

This conclusion, compelled by the plain words of Section 5 (b) and confirmed by the prior history of the language used, is fully borne out if the statute is viewed in the light of the needs which called for its enactment. When the First War Powers Act, 1941, was enacted, it had become notorious, in large measure as the result of discoveries made in the course of administering the pre-existing freezing controls, that Germany and the other Axis countries had developed a multitude of techniques for concealing actual ownership or control by enemies of ostensibly neutral property. Real ownership was concealed by the use of nominees and by the erection of complex holding company structures, the stock of such holding companies typically being in the form of bearer shares whose ownership was exceedingly difficult to trace. And control was often divorced from ownership and exercised through options, contractual relationships, possession of vital technical information, and loyalty of key personnel. Where, as was most often the case,

cloaking was effected through neutral countries, the difficulties of detecting the enemy interests were accentuated by laws, of which those of Switzerland are typical, which accord a privileged status to and prohibit the disclosure of certain kinds of banking and commercial information. See United States Treasury Department, *Administration of the Wartime Financial and Property Controls of the United States Government* (1942), 29–31; Hearings before a Subcommittee of the Senate Committee on Military Affairs (Kilgore Committee) 79th Cong., 1st Sess., pursuant to S. Res. 107 and S. Res. 146, June–December, 1945, pp. 49, 52, 68–9, 564–85, 969–77, 1063, 1203–1221; H. Rep. No. 2398, 79th Cong., 2d Sess., p. 3.

During World War I, the right to vest and retain property had depended upon establishment of enemy ownership, and "enemy" was defined in terms of citizenship, residence, and place of incorporation or doing business. Under these definitions, seizure of German-controlled property could have been averted by such simple expedients as, for example, placing ownership of it in a Swiss corporation 100% of the stock of which

---

See especially the memorandum from the Legal Division of I. G. Farbenindustrie dated June 8, 1939, entitled "Protection of I. G. Assets Abroad," set out at pp. 573–580, and the further report of I. G. Farbenindustrie to the German Ministry of Economics, dated September 26, 1940, discussing "the success of our camouflage measures in the hitherto enemy countries," set out at pp. 1216–21.

was owned by Germans. In such a case, the property would have been outside the seizure power conferred by Section 7 (c) because owned by a Swiss neutral, for it had been held that the corporate entity could not be disregarded even in cases of 100% stock ownership. *Behn, Meyer & Co.* v. *Miller*, 266 U. S. 457; see *Hamburg-American Co.* v. *United States*, 277 U. S. 138, 140–41. By extending the vesting power to property "of any foreign country or national thereof" and confirming a concept of nationality determined by substantial ownership and control as well as by location, citizenship, residence, and domicile,[8] Congress made available an instrument

[8] By Executive Order No. 8389, Section 5E, the term "national" was defined as including:

"(i) Any person who has been domiciled in, or a subject, citizen or resident of a foreign country at any time on or since the effective date of this Order,

"(ii) Any partnership, association, corporation or other organization, organized under the laws of, or which on or since the effective date of this Order had or has had its principal place of business in such foreign country, or which on or since such effective date was or has been controlled by, or a substantial part of the stock, shares, bonds, debentures, notes, drafts, or other securities or obligations of which, was or has been owned or controlled by, directly or indirectly, such foreign country and/or one or more nationals thereof as herein defined,

"(iii) Any person to the extent that such person is, or has been, since such effective date, acting or purporting to act directly or indirectly for the benefit or on behalf of any national of such foreign country, * * *."

This definition was incorporated into Section 10 (a) of Executive Order No. 9193, July 6, 1942, 7 F. R. 5205, which

for cutting through any scheme by which the guise of neutrality might be used to hide enemy interests.

Aside from the problem of cloaking, awareness that in a war of world-wide dimensions enemy character could not always be assumed to follow political boundaries was a sufficient reason to free the vesting power from the technical limitations of enemy status embodied in the 1917 Act. Finally, even in the case of property in the United States owned and controlled by an alien of undoubted friendliness toward this country, it was entirely appropriate that Congress, acting in response to the most crucial national needs, should have affirmed the possibility of a vesting to permit the affirmative use of the property by the Government for wartime purposes, protection of any constitutional rights of the friendly alien being assured by the available remedy of suit for just compensation.[9] There was thus every reason why Congress, legislating at the outbreak of a war whose future course was unpredictable, should have deemed it appropriate to confer upon the Executive the widest possible range of powers over all foreign property, and should have chosen, as it did, to extend the powers to vest, retain, and affirmatively use to all property which was then subject to freezing controls or

---

delegated powers under Section 5 (b) to the Alien Property Custodian.

[9] See Point III, *infra*.

which might in the future be subjected to those controls.

B. *The legislative history.*—The committee reports and the debates in Congress relating to the First War Powers Act, 1941, make it clear that Section 5 (b) as amended authorizes the vesting and retention of any alien property. The report of the House Committee on the Judiciary stated (H. Rep. No. 1507, 77th Cong., 1st Sess., pp. 2–3):

> Title III of the bill deals with the Trading With the Enemy Act, which originally became law on October 6, 1917, during the last war. Some sections of that act are still in effect. Some sections have terminated, and there is doubt as to the effectiveness of other sections.
>
> Title III contains three provisions:
>
> (1) Section 5 (b) of the Trading With the Enemy Act has been continued down to the present time. The existing system of foreign property control (commonly known as freezing control) is based on that subdivision as last amended on May 7, 1940. That subdivision of section 5 as it is now in effect, however, does not give *the broad powers to take, administer, control, use, liquidate, etc., such foreign-owned property* that would be given by section 301 of the bill.
>
> At present the Government exercises supervision over transactions in foreign property, either by prohibiting such transactions or by permitting them on condition

and under license. It is, therefore, a system which can prevent transactions in foreign property prejudicial to the best interests of the United States, but it is *not a system which can affirmatively compel the use and application of foreign property* in those interests.

Section 301 remedies that situation by *adding to the existing freezing control,* in substance, the powers contained in the Trading With the Enemy Act with respect to alien property, extending those powers, and adding a flexibility of control which experience under the original act and the recent experience under freezing control have demonstrated to be advisable. The provisions of section 301 *would permit the establishment of a complete system of alien property treatment.* It vests flexible powers in the President, operating through such agency or agencies as he might choose, to deal with the problems that surround alien property or its ownership or control in the manner deemed most effective in each particular case. In this respect the bill avoids the rigidity and inflexibility which characterized the alien property custodian law enacted during the last war. The necessity for flexibility in legislation on this subject is accentuated by the vastness of the alien property problem confronting the Government today. At the peak of his activity, the Alien Property Custodian of the last war administered property valued at something over $500,000,000. Today

there is over $7,000,000,000 worth of property already subject to the existing control.

This provision of the bill to a considerable extent follows the pattern of existing law and is *a logical extension of the present foreign property control system,* which has been operating very satisfactorily for almost 2 years. The extension could be put into immediate operation with a minimum amount of trouble or dislocation of legitimate activities. [Italics supplied.]

The House committee report thus shows beyond question that "the broad powers to take, administer, control, use, liquidate, etc.," were to be added "to the existing freezing control" and to extend to all the "foreign-owned property" which was then subject to the freezing control. It points out that the bill was intended to authorize "a complete system of alien property treatment" in which the Executive would have "flexible powers" to use the regulatory powers or the vesting powers or both "in the manner deemed most effective in each particular case"—a clear indication that the two sets of powers were to be available co-extensively. That the committee fully recognized the magnitude of the property thus subjected to the powers to vest, retain, and use is shown by its comparison of the

"$7,000,000,000 worth of property" then frozen[10] to which the new powers conferred by Section 5 (b) were to apply, with the approximately $500,000,000 worth of property vested by the Alien Property Custodian in World War I.

The report of the Senate Committee on the Judiciary, S. Rep. No. 911, 77th Cong., 1st Sess., p. 2, although somewhat briefer, is essentially similar.

The debates in Congress on the bill which became the First War Powers Act confirm the conclusion that the powers to vest, retain, and use property, conferred by Section 5 (b), were regarded as additions to the existing freezing powers and as having an application co-extensive with them. Thus, in response to a question whether the bill "in any respect goes beyond the war powers yielded to President Wilson," Senator Van Nuys, Chairman of the Senate Judiciary Committee, stated (87 Cong. Rec. 9838):

> It does so not in reference to the Overman Act, under title I; but when it comes to the Trading With the Enemy Act, in the provisions for seizure and freezing of alien property, it goes further, and *not only*

[10] The ownership of this $7,000,000,000 of frozen property was as follows (all figures approximate):

Nationals of enemy countries	$465,000,000
Nationals of enemy-occupied countries	4,000,000,000
Nationals of other blocked countries	2,700,000,000

Annual Report, Office of Alien Property Custodian, March 11, 1942, to June 30, 1943, pp. 93–5.

freezes it, but seizes the property; possession of it vests in the United States, and the property is to be liquidated and disposed of under the rules and regulations of the Department. To that extent it exceeds the powers granted President Wilson." [Italics supplied.]

In the House, Representatives Gwynne, Kefauver, and Robsion, all members of the Judiciary Committee which reported the bill, similarly spoke of the amendments as conferring the power to vest and use the same property that was already subject to the freezing controls. See 87 Cong. Rec. 9862, 9865, 9866.[12] Mr. Hancock, also

[11] See also the remarks of Senator Van Nuys at 87 Cong. Rec. 9845:

"* * * the Attorney General informed us that there are at least $7,000,000,000 of funds that have to be seized or frozen under present conditions. This measure gives authority to that agency, whether it be the Alien Property Custodian or otherwise, not only to freeze these assets, but to seize them and dispose of them and liquidate them * * *." The $7,000,000,000 referred to was the total amount of property then subject to freezing. See note 10, *supra*.

[12] Summarizing Title III of the First War Powers Act, Mr. Gwynne said (87 Cong. Rec. 9862):

"The second authority is this: To regulate and prohibit the transfer or use of property of any foreign nation or of any foreign national in the United States.

"Third, the President is given authority to vest the ownership of *such property* in any person designated by the President. For example, I presume later on we will carry out the purposes of this statute by creating an Alien Property Custodian.

"Fourth—and this is the principal difference between this law and the one we had during the last war—the *President may hold and use*—that is the new part—*or sell such prop-*

a member of the committee, who was described as having given "special attention to this measure" (87 Cong. Rec. 9856), was even more explicit (87 Cong. Rec. 9861).

> There is another very important change in section 301 from the present Trading With the Enemy Act. Under our former law I think we still have power to seize enemy alien property and under our present law of export control we have considerable

---

erty for the benefit of the United States." [Italics supplied.]

Mr. Kefauver said (87 Cong. Rec. 9865):

"It was explained to us by representatives of the Treasury that it was absolutely necessary for the present act—5 (b)—to be reenacted in order to enable the Treasury to carry out its policy of freezing certain credits and of handling certain financial interests during the war. The explanation made to us, and I think it is carried out in this bill, is that the only change the Treasury wanted in 5 (b) of the Trading With the Enemy Act was to give the executive department power not only to passively freeze credits and to negatively handle the operation of some manufacturing plants by a system of licenses or controls that they have to work under at the present time, but also to give the President the power to actively put into operation those interests or those securities or plants that might be taken . . . and be seized under authority of 5 (b) of the present act."

Mr. Robsion said (87 Cong. Rec. 9866):

"Up to this time our Government has already taken over $7,000,000,000 worth of money, credits, and other property. There is no sense in this Government holding this $7,000,000,000 worth of property inactive, allowing it to rust, plants to remain idle, and bear the expense of its maintenance. This bill gives the Government the right, not only to take it over, but to convert it, to sell it, or to use it, and that is one important amendment to the Trading With the Enemy Act, and it ought to be adopted."

> additional power over alien property, but this goes much further and *gives the agents appointed by the Government the power to seize any property, any and all alien property, whether belonging to friend or enemy, and to put it into use.* This is a power that has never been enjoyed before by any specific provision and it is important. It gives us the right to utilize the property we take over. The bill covers considerably more ground in this respect than the old act. [Italics supplied.]

In contrast to this very explicit and considered statement of Mr. Hancock, the debates in the House include two remarks which, if read out of context, might be thought to support the view that only the vesting of enemy property was contemplated. Thus, Mr. Sumners, the Chairman of the House Judiciary Committee, at one point stated that "this is simply a section dealing with alien enemies" (87 Cong. Rec. 9859). The statement was made, however, in response to a question whether the regulatory provisions of subparagraph (A) of Section 5 (b), which were in terms applicable to transactions in coin, bullion, currency, or securities without regard to the nationality of the owner, extended to "securities held by anybody in the United States." The statement was thus addressed to the question whether those provisions applied to domestic transactions in which no foreign national parti-

cipated; no issue had been raised as to the distinction between aliens and alien enemies. Subsequently, Mr. Sumners agreed "absolutely" to the statement that these regulatory provisions applied to "transactions involving property in which any foreign country or a national thereof has an interest" (87 Cong. Rec. 9862). And on the following day he further qualified his remarks on this point by stating that "there was no intention on my part * * * to propose or support any legislation reducing the powers of the President under existing law, nor to reduce in any degree existing law relative to domestic transactions" (87 Cong. Rec. 9946). Since it was plain under existing law that the provisions of subparagraph (A) to which Mr. Sumners referred were applicable without regard to the nationality of the persons involved,[13] this qualification destroyed the entire force of his previous statements with respect to subparagraph (A). In any event, Mr. Summers' extemporaneous statement, addressed to the extent of the regulatory

[13] See *supra*, p. 10. Those provisions were an expansion of the provisions added to Section 5 (b) by the Emergency Banking Act of March 9, 1933, 48 Stat. 1, which had been repeatedly held applicable without regard to the nationality of the persons involved. *British-American Tobacco Co.* v. *Federal Reserve Bank*, 104 F. 2d 652, 105 F. 2d 935 (C. C. A. 2); *Uebersee Finanz-Korporation, Etc.* v. *Rosen*, 83 F. 2d 225 (C. C. A. 2); *Campbell* v. *Chase Nat. Bank*, 71 F. 2d 669 (C. C. A. 2), appeal dismissed, 291 U. S. 686, certiorari denied, 293 U. S. 592; see *Norman* v. *Baltimore & Ohio R. Co.*, 294 U. S. 240, 295–6.

provisions of subparagraph (A), cannot be read as a statement that the powers to vest and retain and use extended any less broadly than did the existing freezing controls.

The only other reference to "enemies" in the debates was made by Representative Fish who, in a three-sentence summary of Title III of the First War Powers Act, spoke of that title as giving "the power to use property of the enemy that we may confiscate" (87 Cong. Rec. 9856). Plainly the reference to enemy property was no more than illustrative and cannot be read as an assertion, contrary to the explicit language of the statute, that the bill did not apply to all foreign property, or that the powers to vest and to use were less extensive than the regulatory powers.[14]

[14] Mention should perhaps also be made of the statement of Mr. Sumners that "there is no substantial difference between the provisions of this bill and the similar grants of power in the Overman Act and the Trading With the Enemy Act" (87 Cong. Rec. 9859; see also remarks of Mr. Fish, 87 Cong. Rec. 9856, and Mr. Springer, 87 Cong. Rec. 9865). The context does not indicate whether Mr. Sumners was addressing himself merely to the character of the powers granted, or also to the range of property to which they would apply; nor does it indicate what he then conceived to have been the powers available to President Wilson. Such a general characterization of the bill as a whole is thus of little force in construing the scope of the vesting power which it conferred. In this connection, it should be noted that Senator Van Nuys also initially characterized the bill "in a nutshell" as granting "the same war powers that were exercised by President Wilson," but later explicitly stated that the bill "not only freezes * * * but seizes the prop-

Such incidental statements on the floor of Congress, none of which were specifically addressed to the question of the scope of the powers to vest, retain, and use conferred by the bill, cannot prevail against the explicit statement of Mr. Hancock that the bill gave the power "to seize any property, any and all alien property, whether belonging to friend or enemy, and to put it into use"—a statement with which neither Mr. Sumners nor any other member of the House took issue—or against the numerous references in the debates and the committee reports to the powers to vest and retain and use property as additions to and co-extensive with the existing freezing controls, applicable to all foreign property. At no time in the course of the debates was there any suggestion that the powers to vest, retain, and use were to apply to any less extensive range of property than was then subject to the freezing powers to which they were added. We submit that from the legislative materials no other conclusion is possible than that Congress understood the Act as achieving the result which its text compels and which the committee reports unambiguously declared. Section 5 (b) must be accepted as conferring the powers to vest and to put to affirmative use in the interest of the

erty * * *. To that extent it exceeds the powers granted President Wilson" (87 Cong. Rec. 9838)—a clear statement that the vesting power was to be co-extensive with the existing freezing power.

United States all of the property which was then subject to the freezing powers, *i. e.*, all property of any foreign country or national.

C. *Misconceptions underlying the denial of this construction by the court below.*—The court below thought that this result nevertheless could not have been intended. It said that it found no reason to believe (R. 9–10)

> * * * that the calamity of war was to be used to eliminate and destroy all alien investment in the United States. Certainly, it cannot be urged that Congress intended to jeopardize, without adequate remedy, the billions of dollars of allied and friendly nations' property merely because of its temporary presence in this country in time of war, and the purpose in the enlargement of § 5 (b) must necessarily have been to reach with confiscation only that portion tainted with an enemy interest.

We respectfully suggest that there is no basis for such a picture of wanton destruction of the interests of alien friends in the United States. In the first place, Congress did not make the exercise of the vesting power mandatory, but rather contemplated a "flexible program" in which the Executive could choose from among a wide variety of powers those most appropriate to the needs of each particular case. At the time of passage of the First War Powers Act, although the statutory powers were available for extending

freezing controls to all foreign property in the United States, by no means all such property had in fact been subjected to freezing. There was no reason to suppose that the more drastic measure of vesting would be taken in respect of all foreign property, or even of all foreign property then frozen. In practice, the Custodian has in general exercised the vesting power only where, as in this case,[15] he had grounds for believing that the property was enemy owned or controlled, or where the vesting was deemed advisable to conserve the property of a resident of enemy-occupied territory. See H. Rep. No. 2398, 79th Cong., 2d Sess., p. 4.[16]

---

[15] In Amendatory and Supplemental Order No. 1 to Vesting Order No. 14 (see *infra*, pp. 96–101) the Custodian found that the respondent was acting for or on behalf of and was controlled by Wilhelm and Marta von Opel, both nationals of Germany, and that all of its capital stock was beneficially owned by Wilhelm and Marta von Opel with contingent interests in other members of the von Opel family.

[16] The following figures, taken from the Annual Report, Office of Alien Property Custodian, Fiscal Year Ending June 30, 1944, p. 14, indicate the relatively small proportion of all foreign property which has in fact been vested:

Total foreign property (allied, neutral, enemy-occupied and enemy countries)	$15,556,000,000
Foreign property under some measure of control by the U. S. Government	7,965,000,000
Total enemy property	567,000,000
Property vested in Alien Property Custodian	197,000,000

As a result of subsequent expansion of the vesting program, it has been estimated that as much as $250,000,000

Moreover, Congress did not "reach with confiscation" even the limited amount of foreign property not owned by enemies which may have been vested during this war, nor are foreign owners of vested property left "without adequate remedy." The ultimate disposition of the vested property has not yet been determined by the Congress. (*Cf.* Trading With the Enemy Act, Section 12, last paragraph; *Cummings* v. *Deutsche Bank,* 300 U. S. 115, 120–121.) Congress has, however, by the addition of Section 32 to the Act, empowered the Executive to return vested property to many foreign nationals and some enemies within the World War I definitions upon a finding that return is in the interest of the United States. (Pub. L. No. 322, 79th Cong., 2d Sess., March 8, 1946.)[17] Where return is not made under these provisions, the foreign national claimant may secure full protection of any and all constitutional rights through the traditional remedy of a suit against the United States for just compensation. See Point III, *infra,* pp. 54–63. But to compel return if the property is not found to be enemy property within the definitions of the 1917 Act, even though return is determined

additional property might be vested. Annual Report, Office of Alien Property Custodian, Fiscal Year Ending June, 1945, p. 9.

[17] By Executive Order No. 9725, May 16, 1946, 11 F. R. 5381, the Alien Property Custodian was designated as the officer to administer the powers and authority conferred by this Section.

by the Executive not to be in the public interest, would destroy the authority to make affirmative use of all foreign property in the national interest which Congress conferred by the enactment of the First War Powers Act.

D. *Administrative construction of the powers conferred by Section 5 (b).*—The contention was made on behalf of the respondent in both courts below that the Custodian's "actual practice and philosophy" (Brief for Appellant in the Court of Appeals for the District of Columbia, 19) support a different interpretation of the power to vest and retain granted by Section 5 (b) from that advanced here. That the Custodian has in general refrained from vesting property not believed to have a substantial enemy taint (see p. 29, *supra*) merely reflects an election to exercise less than his full authority, and cannot affect the availability of that authority whenever circumstances deemed appropriate for exercising it might arise. *Cf. United States* v. *Lowden,* 308 U. S. 225, 239; *Neuberger* v. *Commissioner,* 311 U. S. 83, 89; *Peoples Natural Gas Co.* v. *Federal Power Commission,* 127 F. 2d 153, 155 (App. D. C.) certiorari denied, 316 U. S. 700. In any event, the Custodian has indicated his understanding that the vesting power extends to non-enemy property by issuing many vesting orders upon a finding solely that the owner was a "foreign national," without making reference in the orders themselves to the

cloaking or other hostile action which may have prompted his decision. See, *e. g.*, Vesting Orders No. 1052, 8 F. R. 4214; No. 1250, 8 F. R. 7044; No. 1409, 8 F. R. 7049; No. 1587, 8 F. R. 10582; No. 1636, 8 F. R. 10584, 9 F. R. 359; No. 2097, 8 F. R. 16463; No. 2350, 8 F. R. 14634; No. 2643, 9 F. R. 351; No. 2692, 9 F. R. 463; No. 3056, 9 F. R. 2703; No. 3266, 9 F. R. 3664, 9 F. R. 8270; No. 3695, 9 F. R. 7217. And many of the vesting orders addressed to property of "nationals of a designated enemy country" reveal on their face that they are founded upon a concept of nationality based upon control by, or action on behalf of, persons hostile to the United States which goes beyond the definition of "enemy" embodied in Section 2 of the Act, thus confirming the Custodian's understanding that Section 5 (b) had enlarged the vesting power. See, *e. g.*, Vesting Orders No. 1036, 8 F. R. 6187; No. 1040, 8 F. R. 3644; No. 1218, 8 F. R. 7037; No. 2263, 8 F. R. 13989; No. 2694, 9 F. R. 464; No. 2883, 9 F. R. 1625; No. 3266, 9 F. R. 3664, 9 F. R. 8270; No. 3267, 9 F. R. 3665; No. 3684, 9 F. R. 7213.

The opinion of the Vested Property Claims Committee of the Office of Alien Property Custodian in *Matter of Leopold H. P. Klotz*, May 2, 1944, Office of the Alien Property Custodian, Final Determinations of the Vested Property Claims Committee, December, 1943, to March, 1946, p. 108, to which the respondent made refer-

ence below, falls far short of establishing the contrary. It merely asserts the Custodian's power to divest where vesting had been based upon a mistaken belief that the claimant was a "cloak." It should be noted that a return was in fact made in this case only upon the Custodian's finding that it would be "in the interest of and for the benefit of the United States" (Divesting Order No. 93, June 6, 1944, 9 F. R. 6471), a standard subsequently embodied in Section 32. The Custodian's recognition, after the *Klotz* decision and prior to the enactment of Section 32, that his authority to make returns to foreign nationals by administrative decision in the absence of legislation was doubtful (see Annual Report, Office of Alien Property Custodian, Fiscal Year Ending June, 1945, p. 162) is wholly inconsistent with an understanding by the Custodian that his authority to retain vested property extended only to property of enemies or allies of enemies.

II

SECTION 9 (a) OF THE ACT DOES NOT AUTHORIZE THE RECOVERY OF PROPERTY OF A FOREIGN NATIONAL WHICH THE CUSTODIAN WAS EMPOWERED TO VEST, RETAIN, AND USE

In *Markham* v. *Cabell*, 326 U. S. 404, this Court enunciated the principles which we think must govern the applicability of the remedies of Section 9 (a) to property vested pursuant to Section 5 (b). Declaring that Section 9 (a)

came into force on the outbreak of this war "unless repealed or superseded" (326 U. S. at 409), this Court held that the right of one who was not a foreign national to sue on a debt under Section 9 (a) "has not been wholly withdrawn" (326 U. S. at 412). In authorizing suit on such a debt by one who was not a foreign national, the Court was careful to point out that such an action was not "inconsistent with the new power granted the Executive by § 5 (b) to make any affirmative use of the property that the national interest in time of war might require" (326 U. S. at 412), and did not "collide * * * with the policy of § 5 (b)" or "cause interference with the administration of the vested property pursuant to § 5 (b)" (326 U. S. at 413). Judgment was expressly reserved on the question whether the provisions of Section 9 (a) prescribing the method of satisfaction of judgments rendered pursuant to that Section and allowing suits to reclaim property "have been superseded by § 5 (b)" (326 U. S. at 412, 413).

That the remedies of Section 9 (a) remain available, as this Court has indicated, only to the extent that they are not inconsistent with the exercise of the new powers conferred by Section 5 (b) and do not collide with the policy of that Section is a result which, we submit, follows from the fact alone that Section 5 (b) is the more recent enactment of Congress. Unambiguously extending the power to vest and retain to prop-

erty of any "foreign country or national thereof," it cannot be reduced to narrower dimensions without doing violence to a plainly stated Congressional purpose. The ordinary presumption against repeals by implication, which favors a construction of an amendment consistent with the preexisting statute if the amendment, fairly read, will bear such a construction, can have no application here. (Cf. *United States* v. *Jackson*, 302 U. S. 628, 631–2). If Section 9 (a) is to be read as inconsistent with the retention of property of foreign nationals, there is no process of construction by which the terms of Section 5 (b) can be reconciled with it, and the earlier Section must give way. *United States* v. *Tynen*, 11 Wall. 88, 92–3; *United States* v. *Fisher*, 109 U. S. 143, 145; *United States* v. *Yuginovich*, 256 U. S. 450, 463–4.

Confirmation of this conclusion is to be found in the circumstances in which Section 5 (b) was amended. Congress has made it clear that it had no desire to make consistency with the preexisting Trading With the Enemy Act a measure of the powers embodied in Title III of the First War Powers Act, 1941. On the contrary, acting in great haste within a week after our declaration of war upon Germany and Japan,[18] Congress

[18] The original bills, H. R. 6206 and S. 2118, were introduced in the House on December 11, 1941 (87 Cong. Rec. 9704) and in the Senate on December 12 (87 Cong. Rec. 9706). Title III of those bills was wholly different from Title III as enacted. On December 15, 1941, new bills, H. R.

concerned itself solely with assuring the immediate availability of powers deemed necessary in the prosecution of the war, and its starting point was the necessities of this war as understood from contemporaneous experience with freezing controls rather than the powers granted during World War I. Indeed, so indifferent was Congress to the possibility of inconsistencies between Section 5 (b) and provisions enacted during World War I, that it did not seek to determine which sections of the Trading with the Enemy Act were still in force. The report of the House Committee is prefaced by the statement that "Title III of the bill deals with the Trading With the Enemy Act, which originally became law on October 6, 1917, during the last war. Some sections of that Act are still in effect. Some sections have terminated, and there is doubt of the effectiveness of other sections." (H. Rep. 1507, 77th Cong., 1st Sess., p. 2.) Without further discussion of provisions of the Act other than Section 5 (b), the report goes on to discuss the proposed amendments to Sec-

6233 and S. 2129 were introduced in substantially the form in which the Act was passed (87 Cong. Rec. 9828, 9753), and the bills were reported back favorably to both Houses on the same day (87 Cong. Rec. 9801, 9789). The bills were debated and passed both Houses on December 16 (87 Cong. Rec. 9837–46, 9855–68). On December 17, the Senate withdrew its bill and passed the House bill with amendments (87 Cong. 9893–5), and the House agreed to the Senate amendments (87 Cong. Rec. 9946–7). On December 18 the Act was signed by the President (55 Stat. 841).

tion 5 (b) and to contrast the new powers to be conferred by the amendments with the powers already available under that Section. In the House Mr. Kefauver similarly stated (87 Cong. Rec. 9865):

> * * * Of course, this bill does not cover everything that will have to be done. There are some parts of the Trading With the Enemy Act that are still in force, and there are some parts of it that are not in force. I think it is going to take a very careful examination of all these laws to see what other parts it may be necessary again to make vital during the continuation of the war, * * *.

These disclosures that Congress had neither reviewed the provisions of the Trading With the Enemy Act nor made any assumption as to how much of it remained in force emphasize the artificiality of applying here any presumption that Congress sought to avoid inconsistency with the World War I legislation. *Cf. United States* v. *Claflin*, 97 U. S. 546, 551. But, in any event, in view of the terms used in Section 5 (b) and their history, there is no process by which the power to vest and retain may fairly be construed as comprehending anything less than all property of foreign countries and their nationals. If Section 9 (a) or any other section of the Act surviving from World War I is inconsistent in this respect, the earlier sections, rather than an unambiguous later amendment,

must make whatever accommodations are needed to permit the Act to operate as "an integrated whole," *Markham* v. *Cabell, supra,* 411.

We think it clear, therefore, that if there is any inconsistency between the provisions of Section 9 (a) and those of Section 5 (b) so construed, the latter enactment of Congress must control and Section 9 (a) be deemed *pro tanto* repealed or superseded. Plainly, if Section 9 (a) is to be construed as the court below has construed it there is such a conflict. To compel the return of property of a national of a foreign country designated by the Executive, which has been vested upon a determination that such vesting is "in the public interest,"[19] would nullify the explicit legislative grant of power to vest, retain and use the property of all foreign nationals, and would defeat the declared Congressional purpose to permit the affirmative use of foreign property in the interests of the United States. But we think there is no such conflict between the two Sections, and that if Section 9 (a) is read according to its terms and with due regard for its historic function in the scheme of the Act, the remedies of that Section can be fully integrated with the new powers conferred by Section 5 (b) without interfering with the exercise of those powers.

Although Section 9 (a) authorizes "any person not an enemy or ally of enemy" to bring suit for

[19] See Vesting Orders set out in Appendix C, *infra*, pp. 95–111.

the return of vested property, it requires, as the condition of any recovery, that the claimant "establish" an "interest, right, [or] title" in the property sued for, and it empowers the court, sitting "in equity," to direct the return of the "money or other property * * * or the interest therein to which the court shall determine said claimant is entitled." Appendix A, *infra*, pp. 73–74. If the vested property was the property of a foreign country or national, which the Custodian was authorized to vest and retain, the claimant cannot be held "entitled" to its return, for the property is held by the Custodian pursuant to an act of Congress which expressly authorizes him to retain it.

Thus construed, Section 9 (a) continues to have the function it had in World War I. As originally enacted, it was the complement of the seizure power conferred by Section 7 (c). Section 7 (c) empowered the Custodian to seize any property upon his *ex parte* determination that it was enemy owned. *Central Union Trust Co.* v. *Garvan*, 254 U. S. 554; *Stoehr* v. *Wallace*, 255 U. S. 239; *Commercial Trust Co.* v. *Miller*, 262 U. S. 51. Since such an *ex parte* determination could not stand as a final adjudication of property rights, a judicial determination of the question of enemy ownership—then the statutory criterion of the right to seize and retain—was afforded by suit under Section 9 (a). If the property was determined not to be enemy owned, it was to be

returned to the former owner; if it was determined to be enemy owned, it was retained by the Custodian. *Behn, Meyer & Co.* v. *Miller*, 266 U. S. 457; *Stoehr* v. *Wallace, supra.* As stated by Mr. Justice Holmes in *Central Union Trust Co. v. Garvan, supra,* "the subject of the section [Section 7 (c)] is enemy property only" (p. 567), but "for the purposes of immediate possession the determination of the Enemy Property Custodian [that property belongs to an enemy] is conclusive, whether right or wrong" (p. 566), Section 9 (a) "saving the ultimate rights of the claimant" (p. 568). The purpose of Section 9 (a) was thus to afford an ultimate judicial determination of the question whether the property seized was within the specifically stated seizure power, and to remedy by return those seizures in which the Custodian's *ex parte* determination was judicially found to be incorrect. In short, Section 9 (a) was never intended to establish a substantive definition of the range of property whose seizure and retention was authorized; it served merely the procedural function of providing an opportunity for a full judicial determination which would replace the Custodian's initial *ex parte* administrative determination.

With the enlargement of the vesting power to comprehend not merely enemy property but all foreign property, the range of property which

may be returned by suit under Section 9 (a) must be deemed to have been correspondingly narrowed. As before, the Custodian may initially establish dominion over property on his own determination that the property is within the range of vestible property specified by the Act. *United States* v. *The Antoinetta,* 153 F. 2d 138, 143 (C. C. A. 3), certiorari denied, 328 U. S. 863, 864; *Application of Alien Property Custodian of U. S.,* 60 N. Y. S. (2d) 897, 901–2 (App. Div. 4th Dept.); *Stern* v. *Newton,* 180 Misc. 241, 244–5, 39 N. Y. S. 2d 593, 596–8 (Sup. Ct.). Moreover, suit for return under Section 9 (a) continues to be available as the only statutory means for a subsequent judicial determination, which will replace the Custodian's initial *ex parte* determination and thus satisfy the requirements of procedural due process. But in either case the question to be determined is whether the property was within the vesting power specifically conferred. If the property was not within that power, *i.e.,* if the claimant is, in the words of Section 9 (a), "entitled" to the property, the court is authorized, as it has been since the Section was originally enacted, to order return. But where the court finds that the property was within the specified range of Section 5 (b), *i.e.,* that it was property of a "foreign country or national thereof," the court cannot order return without disregarding the major substantive change which the First War Powers Act,

1941, effected in the Trading With the Enemy Act.

That the court below did disregard this major substantive change is dramatically illustrated by one especially grave consequence of its decision. The holding that any one not an "enemy or ally of enemy" can compel return by suit under Section 9 (a) would make it possible for unquestioned enemies to immunize themselves from the consequences of the Trading with the Enemy Act. Despite enemy ownership and control, a neutral corporation can readily escape the statutory definition of "enemy or ally of enemy." See pp. 15–17, *supra*. Such a corporation, being a person other than an "enemy or ally of enemy", would, in the view of the court below, prevail in a suit under Section 9 (a). Thus, one of the plain advantages envisaged by the extension of the powers to vest and retain to any property of foreign nationals would not be realized.

Until the decision of the court below, the few courts in which the problem has been raised had decided in accordance with the position outlined. Two district courts in addition to the District Court for the District of Columbia in this case have held that in view of the enlargement of the power to vest and retain made by Congress in the First War Powers Act, 1941, a foreign national could not recover vested property by suit under Section 9 (a). *Iki* v. *Crowley*, W. D.

Wash., May 10, 1944, and on rehearing, July 10, 1944;[20] *Hayden* v. *Crowley*, W. D., Wash., May 10, 1944, and on rehearing, July 10, 1944;[20] *Draeger Shipping Co.* v. *Crowley*, 49 F. Supp. 215, 219, 55 F. Supp. 906, 912–14, 914 (S. D. N. Y.). See also *Silesian-American Corp.* v. *Markham*, 156 F. 2d 793, 797 (C. C. A. 2), certiorari granted, February 17, 1947, No. 346.[21]

[20] These cases were decided by Judge Black in identical unreported opinions. The opinion of Judge Black follows in full:

"After consideration of the very comprehensive briefs in behalf of each party which supplement the oral arguments which were submitted, and regardless of whether or not the complaint is or is not otherwise sufficient I am satisfied that it is essential that the plaintiff affirmatively allege that he is not a national of a foreign or enemy country. Such allegation is not now present.

"For such reason in any event the defendants' motion to dismiss should be granted.

"Order in harmony herewith may be presented, after notice.

"DATED May 10th, 1944."

[21] In *Duisberg* v. *Crowley*, 54 F. Supp. 365 (D. N. J.), a motion to dismiss similar to that made in this case was denied on the sole ground that the allegations of the complaint amounted to a denial that the plaintiff was a foreign national. The case was later dismissed for failure of prosecution, *Duisberg* v. *Markham*, 149 F. 2d 812 (C. C. A. 3), certiorari denied, 326 U. S. 759.

Several cases have allowed recovery in suits under Section 9 (a) upon findings that the claimant was not a national of a foreign country. *Josephberg* v. *Markham*, 152 F. 2d 644, 649 (C. C. A. 2); *Standard Oil Co. (N. J.)* v. *Markham*, 64 F. Supp. 656 (S. D. N. Y.); *Brassert* v. *Markham*, D. Conn., November 21, 1946. See also *Kind* v. *Clark*, C. C. A. 2d, April 9, 1947.

The court below sought to read the two provisions together in a different manner. Taking as its point of departure the provisions of Section 9 (a) and erecting those provisions into a controlling definition of the range of property which the Custodian was authorized to retain, it has assumed that that definition survived the 1941 amendments and has sought to impose upon Section 5 (b) a construction which would render it consistent with that definition. Feeling itself compelled to recognize that Section 5 (b) confers the power to vest property of all foreign nationals, the court has drawn a distinction between the power to vest and the power to retain which we think neither the text nor the legislative history of the First War Powers Act permits (see *supra*, pp. 9-28), and has imputed to the vesting power a narrow procedural function which was never suggested by Congress and for which there was no conceivable necessity. It stated its construction thus (R. 9):

> Under the Act as it was in World War I, the seizure of alien property was limited to that of enemies, and the seizure was "after investigation." Thus, a determination of enemy ownership was a prerequisite to seizure. A more expeditious procedure to assure quick protection of our economy against enemy influence was to seize initially all alien property, and then upon investigation and with the burden of pro-

ducing the facts placed upon the claimant rather than upon the Custodian, to return the property of aliens not enemies. Amended § 5 (b) and § 9 (a) when read together, prescribe exactly that procedure.

There is no warrant for such a distinction between the power to vest and the power to retain and use. As we have seen, the text of Section 5 (b), as amended, provides that "any property or interest of any foreign country or national thereof shall vest" as determined by the President, and that "such property" shall be held and used, etc., in the interest and for the benefit of the United States. The phrase "such property" can refer only to property of a foreign country or national thereof which has been vested. While the power of the Executive to hold and use vested property for the benefit of the United States may be terminated upon a judicial determination that the property is not the property of a foreign country or national thereof (see *supra*, p. 41), the Section cannot be read otherwise, we submit, than as a direction that vested property which is the property of a foreign country or national may be retained and used by the Executive in the interest and for the benefit of the United States. And the committee reports and debates clearly disclose that the major substantive change which Congress sought to enact was the grant of authority not merely to vest, but to "affirmatively compel the use and application" in the interest

of the United States of the foreign property which was then subject to freezing controls. H. Rep. No. 1507, 77th Cong., 1st Sess., p. 3. Obviously, this purpose would be defeated if the Government could be required to surrender all vested foreign property which was not enemy property.

Moreover, there was no reason for Congress to confer a vesting power of the narrowly limited character attributed to it by the court. Nothing in the history and administration of the Trading With the Enemy Act suggests that the procedural requirements of investigation and determination of enemy character, to which the court conceived the 1941 amendments were addressed, were regarded as imposing a serious administrative burden calling for Congressional alleviation. This Court has emphasized the summary and *ex parte* nature of the Custodian's determination of enemy character under Section 7 (*c*), and has referred to his power as the power to seize property which was merely "supposed" or "believed" to be enemy owned. *Central Union Trust Co.* v. *Garvan*, 254 U. S. 554, 566; *Stoehr* v. *Wallace*, 255 U. S. 239, 245; *Yakus* v. *United States*, 321 U. S. 414, 443. Thus in proceedings to enforce the Custodian's demand that property be transferred to him, it has been held that his recital that an investigation had been made was conclusive and his findings were unreviewable. *Garvan* v. *Com-*

mercial Trust Co., 275 Fed. 841, 844 (D. N. J.), affirmed *sub nom. Commercial Trust Co.* v. *Miller*, 281 Fed. 804 (C. C. A. 3), affirmed, 262 U. S. 51. *Cf.* 262 U. S. at 55. Nor did the character of his investigation and the evidentiary support for his findings assume any significance in a suit under Section 9 (a), for this Court has indicated that in such a suit there was a trial *de novo*, "unembarrassed by the precedent executive determination." *Stoehr* v. *Wallace*, *supra*, 246; *Commercial Trust Co.* v. *Miller*, 262 U. S. 51, 53.. Thus, under the provisions of the Act as it then stood, the Custodian could proceed with all the expedition necessary.[22] And, if the Congressional purpose had been merely to ensure the prompt immobilization of all foreign property pending judicial determination of non-enemy ownership, the vesting

[22] In fact the Custodian has not attempted to "seize initially all alien property," as the court suggested, but has vested only property which he believed was enemy-owned or controlled, or should be vested for conservatory reasons. See p. 29, *supra*. As a guide to his discretion in exercising this power, he has regarded the task of investigation and determination both of the ownership of property and the type of action which is necessary in the national interest in respect of it as a task of major importance. See Annual Report, Office of Alien Property Custodian, March 11, 1942, to June 30, 1943, p. 22. And his vesting orders typically recite the fact of an investigation and contain findings of the ownership of the property by a national of either a foreign country or a designated enemy country, as well as of the necessity for vesting the property in the national interest. See, *e. g.*, the vesting orders involved in this suit, set out in Appendix C, *infra*, pp. 95–111.

provision of Section 5 (b) would have been superfluous, for such immobilization of foreign property could have been fully accomplished through exercise of the freezing controls conferred by subsection (B) of Section 5 (b). Appendix A, *infra*, pp. 70–72.

The court below also found support for its conclusion in the failure of Congress, subsequent to the passage of the First War Powers Act, 1941, to enact amendments which would have confirmed the construction of the Trading With the Enemy Act we advance here. As introduced, the bill [23] which became Public Law No. 671, 79th Cong., 2d Sess., August 8, 1946, included a proposed Section 33 which would have expressly declared that a foreign national might not institute suit under Section 9 (a) for the return of vested property, and provided an explicit remedy by way of suit for just compensation in the Court of Claims. The proposed Section 33 was reported out favorably by the House Committee on the Judiciary (H. Rep. No. 2398, 79th Cong., 2d Sess., pp. 2–9), but it was deleted by the

[23] H. R. 5089, 79th Cong., 1st Sess., reintroduced as H. R. 6890, 79th Cong., 2d Sess., and designated S. 2378 in the Senate.

H. R. 4840, reintroduced as H. R. 5031, 78th Cong., 2d Sess., also referred to by the court, was a predecessor to the foregoing bills. Expiration of the session before this bill could be reported out of Committee foreclosed any action on it. There is therefore no indication of affirmative objection to it, as the opinion below appears to suggest.

Senate Committee (S. Rep. No. 1839, 79th Cong., 2d Sess., p. 2) and the House acquiesced in the deletion. 92 Cong. Rec. 10217–18.

The report of the Senate committee stated that its deletion of Section 33 would "eliminate the proposal to cut off the right of a friendly foreign national to sue for and obtain the return of his property under section 9 (a)" (S. Rep. No. 1839, 79th Cong., 2d Sess., p. 2). But the House committee expressed a diametrically opposite view of the existing state of the law. Its committee report had pointed out that "the courts have thus far sustained the * * * position" that a foreign national may not "secure the return of property by a suit under section 9 (a)," [24] and had stated that by expressly declaring that a foreign national might not institute suit under Section 9 (a), the bill "reaffirms and gives effect to the policy adopted by the Congress in title III of the First War Powers Act, 1941, of authorizing the Government during this war to take over foreign property and to use it in the interest of the United States." (H. Rep. No. 2398, 79th Cong., 2d Sess., p. 3.) In acquiescing in the Senate's deletion of Section 33, both majority and minority members of the House committee indicated that they did so only because the session of Congress was nearing its

[24] The report was written before the decision of the Court of Appeals in this case.

close and insistence on the provision might jeopardize the entire bill. See remarks of Mr. Celler and Mr. Michener, 92 Cong. Rec. 10218. And Mr. Celler, the Chairman of the subcommittee in charge of the bill, clearly indicated that his acquiescence in the Senate's deletion of these provisions was based upon the understanding of the existing state of the law expressed in the report of the House committee. While he apparently thought that the deletion of Section 33 would leave unimpaired a foreign national's procedural right to institute suit under Section 9 (a), he stated that "the court has held that the suit cannot result in a judgment against the United States" (92 Cong. Rec. 10218).

This Court has often cautioned against speculation as to the reasons for Congressional failure to enact legislative proposals (*e.g., Helvering* v. *Hallock*, 309 U. S. 106, 119–21) and has pointed out that the failure to enact a proposed amendment "cannot operate retroactively * * * to give the statute * * * a different meaning from" that which it had when enacted. *Gemsco, Inc.* v. *Walling*, 324 U. S. 244, 265; *cf. United States* v. *Lowden*, 308 U. S. 225, 239; *Higgins* v. *Smith*, 308 U. S. 473, 479–80. Particularly in view of the difference in the views expressed by the House and Senate committees as to the effect of the deletion, it is submitted that the action of Congress in 1946, in deleting the proposed Section

33, cannot control the construction of the First War Powers Act, 1941. If weight is to be attributed to the views expressed, however, we suggest that in these circumstances the views of the House committee should prevail. Not only did Public Law No. 671 originate in the House, but it was considered far more extensively and reported upon more fully by the House committee.[23]

On the other hand, in contrast to the inconclusive inferences from the non-action of Congress, such affirmative action as Congress has

[23] The House committee had the bill under consideration for six months; it held public hearings on it on four different days in February and May, 1946. Hearings before Subcommittee No. 1 of the House Committee on the Judiciary, 79th Cong., 2d Sess., on H. R. 5089. As Mr. Michener stated, "Extensive, and I mean extensive, hearings have been held." 92 Cong. Rec. 10217. Section 33 was widely discussed at those hearings and the principal amendments made to the bill during the course of the hearings were to the provisions of that Section. See the successive texts of the bill set out at House Hearings, pp. 1–5, 43–49, with which compare the similar provisions of H. R. 6890. The colloquies on the floor of the House were joined in by a number of Representatives who had participated in the debates on the First War Powers Act. See remarks of Mr. Celler, Mr. Springer, and Mr. Michener.

The House committee had also held hearings both on H. R. 4840, the predecessor to H. R. 5089 (Hearings before Subcommittee No. 1 of the House Committee on the Judiciary, 78th Cong., 2d Sess., on H. R. 4840) and on the bill which became Public Law No. 322 (see pp. 52–53, *infra*) (Hearings before Subcommittee No. 1 of the House Committee on the Judiciary, 79th Cong., 1st Sess., on H. R. 3750). The Senate committee had held no hearing on either bill.

taken in this field since the First War Powers Act, 1941, was enacted reveals that it proceeded upon the assumption that Section 5 (b) has the effects which the Custodian has attributed to it. Public Law No. 322, 79th Cong., 2d Sess., March 8, 1946, added Section 32 to the Trading With the Enemy Act. In that Section, Congress empowered the Executive to return vested property where such a return was found to be in the national interest and where certain other conditions were satisfied. The Section provided, however, that such returns might not be made to certain defined classes of persons, including some who would be enemies within the definition of Section 2 of the Act and including in addition foreign corporations and associations which were controlled by, or 50% of the stock of which was owned by, persons themselves ineligible for return (Section 32 (a) (2) (E)). The Report of the House Judiciary Committee pointed out that "the bill would not permit any property to be returned to enemy nationals in enemy or former occupied countries or to foreign corporations owned or controlled by such nationals." H. Rep. No. 1269, 79th Cong., 1st Sess., p. 2. Pointing out further that return would be permitted to domestic corporations, the report added that while in some cases property could now be returned to such corporations, "authority is needed to return * * * to corporations in which there existed only minor-

ity American interests" (*ibid.*, p. 3).[26] The Report of the Senate Judiciary Committee is to the same effect. See S. Rep. No. 920, 79th Cong., 2d Sess., pp. 2, 3.

The enactment of Public Law No. 322 thus necessarily assumed that the remedy of return under Section 9 (a) was not available to domestic or foreign corporations which were owned or controlled by persons who were enemies under the defintion of Section 2 of the Trading With the Enemy Act as it was applied during and after World War I. Such corporations would not themselves have been enemies under that definition; enemy character arose only by virtue of incorporation in, or doing business within, enemy territory, and stock ownership or control by enemies had been held irrelevant. *Behn, Meyer & Co.* v. *Miller,* 266 U. S. 457.[27] If, therefore, the remedies of Section 9 (a) were available to all non-enemies, as the court below has held, such

[26] Under the definitions of Executive Order No. 8785, a domestic corporation is a national of a foreign country if it is controlled by, or a substantial part of its securities or obligations are owned or controlled by, such nationals. Section 5E (ii), Appendix A, *infra*, p. 81. Where the foreign stock or security interests were not "substantial," and the corporation was not controlled by foreign nationals, return of the corporate property could thus be made under Section 9 (a) on the ground that the corporation was not a foreign national.

[27] Corporations and associations organized under the laws of an enemy nation were expressly disqualified from return by Section 32 (a) (2) (B) as added by Public Law No. 322.

corporations could have secured the return of vested property either by administrative action or judicial decree as that Section provides. There would have been no occasion for the statements by the committees of Congress that "authority is needed to return" to domestic corporations whose stock had been enemy owned, and there would have been no need for the specific provisions by which return in such cases was authorized.

III

AS THUS CONSTRUED, THE ACT IS CONSTITUTIONAL

A major consideration which appears to have led the court below to adopt its nugatory construction of Section 5 (b) was its view that accepting the Section as an authorization to retain non-enemy foreign property would "raise grave doubts as to the constitutionality of the law" (R. 9). We submit that the doubts are of the court's own making—the result of its holding, contrary to the decision of the Circuit Court of Appeals for the Second Circuit in *Silesian-American Corp.* v. *Markham*, No. 346, *supra*, that the remedy of Section 9 (a) is exclusive so that to deny it to foreign nationals would leave them without remedy.

We think that a remedy of full constitutional adequacy is available to any foreign national claimant whose property is constitutionally protected from uncompensated taking. *Cf. Russian*

Volunteer Fleet v. *United States*, 282 U. S. 481, 489. It is well settled that a taking, authorized by Congress, of private property protected by the Fifth Amendment gives rise to an implied promise to pay just compensation which may form the basis of a suit against the United States in the Court of Claims (or the appropriate District Court if the amount is less than $10,000) under the Tucker Act, Judicial Code §§ 24 (20), 145 (1); 28 U. S. C. 41 (20), 250 (1). *United States* v. *Great Falls Mfg. Co.*, 112 U. S. 645; *United States* v. *Palmer*, 128 U. S. 262; *Hurley* v. *Kincaid*, 285 U. S. 95; *Yearsley* v. *Ross Construction Co.*, 309 U. S. 18. It cannot be doubted that such a suit affords a remedy fully adequate to protect all constitutional rights. *Hurley* v. *Kincaid*, *supra*; *Yearsley* v. *Ross Construction Co.*, *supra*; *cf. Becker Steel Co.* v. *Cummings*, 296 U. S. 74, 79–80. Here all the conditions prerequisite to the maintenance of a suit for just compensation are present. The property being that of a foreign national, absolute title has vested in the United States subject to no duty to return and the former owner is left with no beneficial right to or interest in the property. *Cf. Cummings* v. *Deutsche Bank*, 300 U. S. 115, 120–21. Any return which might be made under Public Law No. 322 or under future enactments of Congress (see p. 30, *supra*) would be a disposition of property of the United States made as a matter of grace, and the possibility of

such a return does not detract from the absolute character of the title acquired by the United States. *Cummings* v. *Deutsche Bank, supra.* There can, moreover, be no question that the vesting and retention of the property was authorized by Congress. (See Point I, *supra.*) And there is nothing in the circumstances of the vesting to repel the normal implication of a promise to pay whatever compensation the Constitution might require should the property fall in fact within the Custodian's authority to vest and retain, for the vesting orders in suit provide, with unimportant variations in phraseology, that the vesting of the property

> * * * shall not be deemed to limit the powers of the Alien Property Custodian to return such property or the proceeds thereof, *or to indicate that compensation will not be paid in lieu thereof* * * *. [Italics supplied.]

The court below held, however, that the remedy of a suit for just compensation was not available because of the provision of Section 7 (c) of the Trading With the Enemy Act that

> The sole relief and remedy of any person having any claim to any money or other property heretofore or hereafter conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or required so to be, or seized by him shall be that provided by the terms of this Act, and

> in the event of sale or other disposition of such property by the Alien Property Custodian, shall be limited to and enforced against the net proceeds received therefrom and held by the Alien Property Custodian or by the Treasurer of the United States.

This provision, added by the Act of November 4, 1918, 40 Stat. 1021, was enacted at a time when the subject of the seizure power was enemy property only, the uncompensated seizure of which resulted in no possible violation of constitutional rights. The only case then calling for a remedy was one in which the Custodian's determination that the property was within the stated power to seize and retain was found to be incorrect. For such a case the appropriate remedy was to undo the seizure so far as possible by providing for the return of the property by administrative action or suit under Section 9 (a) and by requiring that it be kept by the Custodian while such suit was pending. The quoted provision of Section 7 (c) rounded out the scheme by insuring that the specific property, while in the Custodian's hands, could not be reached except by a proceeding under Section 9 (a), and by precluding the possibility that the United States, in addition to its duty to return the property or its proceeds, might be held liable by way of damages for the consequences of the Custodian's honest mistake.

These functions Section 7 (c) may appropriately continue to perform without any collision with the

new provisions of Section 5 (b). As before, a claimant whose property was not within the stated power to vest and retain is restricted to the remedy of Section 9 (a); if the claimant can establish that the Custodian was wrong in determining that the property was property of a foreign national, he can secure the return and is precluded from recovering anything more by way of damages. And, as before, the only way in which the specific property vested may be reached while in the Custodian's hands is by such suit under Section 9 (a) with its attendant requirement that the property be held until the suit is terminated. Thus Section 7 (c) may properly continue to reinforce the exclusive character of the remedy of return where that remedy is available. But we see no justification for attributing to it the new function of denying all remedy in cases where the remedy of return is not available because Congress has authorized the retention of the property, but where the property is constitutionally protected from seizure without payment of compensation.

The text of this provision of Section 7 (c) shows that it was not intended to serve such a function. On its face it would appear to be inapplicable to the claim of a foreign national for just compensation. In terms it purports only to limit the remedy available to persons who have "a claim to money or other property" in the hands of the Custodian, *i. e.*, a claim to the specific

property vested. And this emphasis on the specific property vested is reinforced by the further provision that in the event of sale of the specific res, its proceeds shall be substituted for it, and the claim to recovery shall be enforced against the proceeds. As the court said in *Sigg-Fehr* v. *White*, 285 Fed. 949, 952 (App. D. C.), a case involving property vested during World War I, the provision "relates only to claimants who are not enemies or allies of enemies"—*i. e.*, those who were then given by Section 9 (a) an express claim to the specific money or property vested or its proceeds. Here the foreign national claimant is not a person having a claim to the money or property vested. Since the vesting and retention of his property is specifically authorized by Section 5 (b), he is left without any interest in, or claim to, the property vested. Any suit he might bring for just compensation would necessarily proceed on the assumption that full and indefeasible title to the money or other property has passed to the United States, for only thus could he show the "taking" upon which such a suit must be founded. It would therefore be not a claim "to any money or other property" in the Custodian's hands, but a claim for pecuniary redress based on the premise that the specific money or property is beyond the reach of the claimant.

Nor do the decisions under the Act as it stood prior to amendment of Section 5 (b) by the First.

War Powers Act support a different construction. *Sigg-Fehr* v. *White, supra,* and *Pflueger* v. *United States,* 121 F. 2d 732 (App. D. C.), certiorari denied, 314 U. S. 617, referred to by the court below, were both suits under Section 9 (a). The only question presented was whether the claimant, in addition to recovering the proceeds of sale of the vested property, could recover a further amount based on the alleged inadequacy of the sale price. The decisions rested solely on the proposition that the express remedy of Section 9 (a), where available, must be followed according to its terms. *Becker Steel Co.* v. *Cummings,* 95 F. 2d 319 (C. C. A. 2), certiorari denied, 305 U. S. 604, was a similar case. There the claimant had, in a prior Section 9 (a) suit, recovered the proceeds after deduction of the Custodian's expenses of sale; the court held merely that while those expenses should not have been deducted from the previous recovery, that recovery barred further proceeding under Section 9 (a), and Section 7 (c) precluded any other remedy for a claimant who was entitled to the remedy of Section 9 (a).[28] *Escher* v. *United States,* 68 Ct. Cls. 473, certiorari

[28] The court that decided the *Becker Steel* case has since held that the Trading With the Enemy Act, if construed to deny to foreign nationals the right to recover vested property by suit under Section 9 (a), is nevertheless constitutional because of the availability to such a foreign national of the remedy of suit under the Tucker Act for just compensation. *Silesian-American Corp.* v. *Markham, supra.*

denied, 281 U. S. 752, involved the same claimants as did the *Sigg-Fehr* case, *supra*. The claimants, who had already recovered the proceeds of their property in the Section 9 (a) proceeding, sought to recover in the Court of Claims the additional amounts which had been denied in the *Sigg-Fehr* case. The court held that, apart from principles of res judicata, it was without jurisdiction over such a claim because Congress had expressly provided a different remedy which was available to the claimants.

In all of the foregoing cases, the claimants had claims to the specific property vested or its proceeds. To have allowed recovery by way of just compensation in such cases would have been to ignore the requirement of an authorized taking as a condition of recovery, and to treat the United States either as an involuntary purchaser of property which Congress had not authorized the Custodian to retain but had rather directed him to return, or else as liable for damages arising from a purely possessory taking of property which the claimant could have recovered at any time by bringing suit under Section 9 (a). These decisions and the quoted provision of Section 7 (c) thus relate to property whose retention was not authorized by the Act and presuppose the availability of the express statutory remedy of return. Nothing in them would appear to be relevant to the new problem, created for the first time by

the 1941 amendments to Section 5 (b), of the remedies available to redress an authorized taking of constitutionally protected property in respect of which the remedy of return is unavailable, and nothing in them would appear to preclude resort to the normal remedy of a suit for just compensation to redress such an authorized taking.

Even if the terms of Section 7 (c) on their face more clearly barred suit for just compensation, we submit that they should not now be allowed to interfere with the full realization of the purposes which Congress embodied in the First War Powers Act, 1941. The normal presumption is that Congress intended the policies declared in that Act to be effective. *Cf. United States v. Powers*, 307 U. S. 214, 217; *Gemsco, Inc. v. Walling*, 324 U. S. 244, 255, 258. That presumption is here reinforced by the fact, already adverted to, that in enacting the First War Powers Act, 1941, Congress did not address itself to the problem of the remedies available to persons whose property had been vested, and disclaimed any consideration of the older provisions of the Act and any attempt to eliminate possible inconsistencies between those provisions and its new enactment. Its evident purpose was that the new provisions of Section 5 (b) should form the keystone of the program of foreign property control during World War II, and that while so far as possible the old and the new were to "function as parts of an integrated whole," the new was to prevail in the

event of any conflict. There is nothing in the legislative history of the First War Powers Act to suggest that in authorizing the vesting and retention of property of non-enemy foreign nationals, Congress intended to leave such nationals without remedy, much less that it would have preferred that Section 5 (b) be declared unconstitutional rather than permit resort by a foreign national to the traditional remedy of a suit for just compensation. To the extent that Section 7 (c), if construed as the court below has construed it, would render the policy of Section 5 (b) ineffective by tainting the vesting and retention of property of foreign nationals with unconstitutionality, respect for the indicated Congressional purposes requires that Section 7 (c) be deemed superseded by the newer enactment.

IV

THE ACT IN NO WAY CONFLICTS WITH THE TREATY OF 1850 WITH SWITZERLAND

In the court below, the respondent contended that Article I of the Treaty of Friendship, Commerce and Extradition between the United States and Switzerland, of November 25, 1850, 11 Stat. 587, required that it be allowed to recover its property if an American citizen could in like situation secure a return of property. The court below did not refer to the treaty. Nevertheless, we think it appropriate to point out the reasons why the treaty has no bearing on this case.

Briefly stated, the treaty provides in Article I (see Appendix B, *infra*, pp. 91–92) that the citizens of either country "shall be admitted and treated upon a footing of reciprocal equality in the two countries." The citizens of each are to have liberty to come and go within, take up residence in, acquire and possess property in, and exercise their professions, industry, and commerce in the other country and to have "free access to the tribunals." "No pecuniary or other more burdensome condition" is to be "imposed upon their residence or establishment, or upon the enjoyment of the above-mentioned rights, than shall be imposed upon citizens of the country in which they reside, nor any condition whatever to which the latter shall not be subject." Article II of the treaty provides in part that "in case of war, or of expropriation for purposes of public utility, the citizens of one of the two countries, residing or established in the other, shall be placed upon an equal footing with the citizens of the country in which they reside with respect to indemnities for damages they may have sustained."

At the outset, it should be pointed out that the respondent is not within the protection of any of these provisions. The protection of both Articles extends in terms only to "citizens." The Department of State has authoritatively taken the position that "these references to 'citizen' in Article I and II are to natural persons and they could have no application to corpora-

tions," and has pointed out that it has been the general practice in such treaties either to make no provisions regarding corporations or else to grant to corporations limited privileges different from those granted to natural persons. Letter dated January 3, 1934, from Acting Secretary of State Phillips to the Swiss Minister, MS. Dept. of State, File No. 811.5034/157, quoted in III Hackworth, *Digest of International Law*, 431–2, set out in Appendix B, *infra*, pp. 92–94. The construction given the treaty by the Department of State is entitled to the greatest weight (*Sullivan* v. *Kidd*, 254 U. S. 433, 442; *Factor* v. *Laubenheimer*, 290 U. S. 276, 295) and that construction is here supported not only by the historical and textual considerations set forth in the letter of the Acting Secretary of State, but also by the persuasive analogy of the decisions of this Court holding that the "privileges and immunities of citizens" which are protected by Article IV, Section 2, of the Constitution and of Section 1 of the 14th Amendment, are those of natural persons only. *Bank of Augusta* v. *Earle*, 13 Pet. 519, 586–7; *Blake* v. *McClung*, 172 U. S. 239, 259; *Hemphill* v. *Orloff*, 277 U. S. 537, 548–50; *Hague* v. *Committee for Industrial Organization*, 307 U. S. 496, 514.[29]

[29] In addition, the provisions of Articles I and II quoted above indicate on their face that they are intended only to protect citizens of Switzerland resident in or actively doing business in the United States. *Cf. Madiorano* v. *Baltimore &*

The Swiss treaty can thus have force in the present case only as an aid to the construction of Section 5 (b) on the assumption that Congress cannot be presumed to have legislated in derogation of the treaty rights of other potential claimants who might bring themselves within its protection. If there were conflict between Section 5 (b) and the treaty provision, Section 5 (b), being later, would prevail. *Fong Yue Ting* v. *United States*, 149 U. S. 698, 720–21; *Sanchez* v. *United States*, 216 U. S. 167, 175–6; *Pigeon River Co.* v. *Cox Co.*, 291 U. S. 138, 160.[30]

Ohio R. R. Co., 213 U. S. 268, 274; *Stoehr* v. *Wallace*, 255 U. S. 239, 251; *Junkers* v. *Chemical Foundation*, 287 Fed. 597, 598 (S. D. N. Y.). Nothing in the complaint suggests that the respondent maintains a place of business in the United States or engages actively in any trade or business in the United States, other than to serve as a holding company for securities of American corporations.

[30] This rule is here reinforced by the express provision of Article I that all of the rights and privileges conferred by that Article are subject to the limitation that they "shall not conflict with the constitutional or legal provisions, as well federal as State and cantonal of the contracting parties"—a provision which would appear to comprehend subsequent as well as existing legislation. See *State ex rel. Tanner* v. *Staeheli*, 112 Wash. 344, 350–1, 192 P. 991, 994; *Instant Index Corp.* v. *Tribunal of the Canton of Vaud*, 60 Entscheidungen des Schweizerischen Bundesgerichts, I, p. 220 (1934), Annual Digest and Reports of Public International Law Cases, 1933–34 (1940), pp. 307–309. Compare Article VII of the Treaty of 1800 with France, 8 Stat. 180, 182, on which this provision was said to have been patterned, 5 Miller, *Treaties and Other International Acts of the United States of America*, 887 (quoting a letter from the President and Chancellor of the Swiss Confederation to the American negotiator).

But we submit that there is no possible conflict with any of the provisions of the treaty. Plainly the denial of the substantive right to recover vested property is not a denial of access to the courts within the meaning of Article I; Swiss nationals may have their day in court both in the district court in proceedings under Section 9 (a), and in the Court of Claims or the district court under the Tucker Act. *Cf. Maiorano* v. *Baltimore & Ohio R. R. Co.*, 213 U. S. 268, 274; *Valk* v. *United States*, 29 Ct. Cls. 62, affirmed, 168 U. S. 703.

Nor does the Act violate any substantive rights guaranteed to Swiss citizens by the treaty. In practice the Custodian has not adopted a policy of vesting Swiss property generally. The vesting power has ordinarily been exercised, as we have seen, only where the property was believed to have been infected with an enemy taint, a circumstance which would warrant vesting and retention if an American were the nominal holder of the property. Executive Order No. 8785, Sec. 5E, Appendix A, *infra*, p. 81; *Draeger Shipping Co.* v. *Crowley*, 55 F. Supp. 906 (S. D. N. Y.) And in the extraordinary cases in which Swiss property with no enemy taint may have been vested, the application of the Act is no more than an exercise of the paramount power of the United States to take any property, American or foreign, upon payment of just compensation. The pro-

vision of Article II quoted above expressly contemplates that Swiss property may be subjected to the condition of "expropriation" and guarantees not return of the property, but merely the payment to Swiss citizens of the same "indemnities for damages" as are awarded to American citizens.

CONCLUSION

For the foregoing reasons, the judgment of the Court of Appeals should be reversed with directions to reinstate the judgment of the district court.

Respectfully submitted,

GEORGE T. WASHINGTON,
Acting Solicitor General
JOHN F. SONNETT,
Assistant Attorney General.
STANLEY M. SILVERBERG,
HARRY LEROY JONES,
M. S. ISENBERGH,
Special Assistants to the Attorney General.
JAMES L. MORRISSON,
Attorney.

JOHN WARD CUTLER,
Acting General Counsel,
Office of Alien Property

APRIL, 1947.

APPENDIX A

Trading With the Enemy Act, c. 106, 40 Stat. 411, as amended. (50 U. S. C. App. 1–31):

* * * * *

SEC. 2. That the word "enemy," as used herein, shall be deemed to mean, for the purposes of such trading and of this Act—

(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of any nation with which the United States is at war or incorporated within any country other than the United States and doing business within such territory.

(b) The government of any nation with which the United States is at war, or any political or municipal subdivision thereof, or any officer, official, agent, or agency thereof.

(c) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term "enemy"

The words, "ally of enemy," as used herein, shall be deemed to mean—

(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation which is an ally of a nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of such ally nation, or incorporated within any country other than the United States and doing business within such territory.

(b) The government of any nation which is an ally of a nation with which the United States is at war, or any political or municipal subdivision of such ally nation, or any officer, official, agent, or agency thereof.

(c) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation which is an ally of a nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term "ally of enemy."

* * * * *

Sec. 5. [as amended by the First War Powers Act of 1941, c. 593, Sec. 301, 55 Stat. 839, 50 U. S. C. App., Supp. V, 5 (b)]:

* * * * *

(b) (1) During the time of war or during any other period of national emer-

gency declared by the President, the President may, through any agency that he may designate, or otherwise, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise—

(A) investigate, regulate, or prohibit, any transactions in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin or bullion, currency or securities, and

(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest,

by any person, or with respect to any property, subject to the jurisdiction of the United States; and any property or interest of any foreign country or national thereof shall vest, when, as, and upon the terms, directed by the President, in such agency or person as may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts

incident to the accomplishment or furtherance of these purposes; * * * and the President may, in the manner hereinabove provided, take other and further measures not inconsistent herewith for the enforcement of this subdivision.

* * * * * *

SEC. 7 [as amended by the Deficiency Appropriation Act of Nov. 4, 1918, c. 201, Sec. 1, 40 Stat. 1020]:

* * * * * *

(c) If the President shall so require any money or other property * * * owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of, an enemy or ally of enemy * * * which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or the same may be seized by the Alien Property Custodian; and all property thus acquired shall be held, administered and disposed of as elsewhere provided in this Act.

* * * * * *

The sole relief and remedy of any person having any claim to any money or other property heretofore or hereafter conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or required so to be, or seized by him shall be that provided by the terms of this Act, and in the event of sale or other disposition of such property by the Alien Property Custodian, shall be limited to and enforced against the net proceeds received therefrom

and held by the Alien Property Custodian or by the Treasurer of the United States.

* * * * * *

SEC. 9 [as amended]:

(a) That any person not an enemy or ally of enemy claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, or to whom any debt may be owing from an enemy or ally of enemy whose property or any part thereof shall have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of of the United States may file with the said custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; and the President, if application is made therefor by the claimant, may order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine said claimant is entitled: *Provided,* That no such order by the President shall bar any person from the prosecution of any suit at law or in equity against the claimant to establish any right, title, or interest which he may have in such money or other property. If the President shall not so order within sixty days after the filing of such application or if the claimant shall have filed

the notice as above required and shall have made no application to the President, said claimant may institute a suit in equity in the Supreme Court of the District of Columbia or in the district court of the United States for the district in which such claimant resides, or, if a corporation, where it has its principal place of business (to which suit the Alien Property Custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant), to establish the interest, right, title, or debt so claimed, and if so established the court shall order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States or the interest therein to which the court shall determine said claimant is entitled. If suit shall be so instituted, then such money or property shall be retained in the custody of the Alien Property Custodian, or in the Treasury of the United States, as provided in this Act, and until any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied by payment or conveyance, transfer, assignment, or delivery by the defendant, or by the Alien Property Custodian, or Treasurer of the United States on order of the court, or until final judgment or decree shall be entered against the claimant or suit otherwise terminated.

SEC. 32 [as added by Pub. L. No. 322, 79th Cong., 2d Sess., Mar. 8, 1946 and amended by Pub. L. No. 671, 79th Cong. 2d Sess., August 8, 1946]:

(a) The President, or such officer or agency as he may designate, may return

any property or interest vested in or transferred to the Alien Property Custodian (other than any property or interest acquired by the United States prior to December 18, 1941), or the net proceeds thereof, whenever the President or such officer or agency shall determine—

(1) that the person who has filed a notice of claim for return, in such form as the President or such officer or agency may prescribe, was the owner of such property or interest immediately prior to its vesting in or transfer to the Alien Property Custodian, or is the legal representative (whether or not appointed by a court in the United States), or successor in interest by inheritance, devise, bequest, or operation of law, of such owner; and

(2) that such owner, and legal representative or successor in interest, if any, are not—

(A) the government of a nation with which the United States has at any time since December 7, 1941, been at war; or

(B) a corporation or association organized under the laws of such nation:

Provided, That any property or interest or proceeds which, but for the provisions of this subdivision (B), might be returned under this section to any such corporation or association, may be returned to the owner or owners of all the stock of such corporation or of all the proprietary and beneficial interest in such association, if their ownership of such stock or proprietary and beneficial interest existed immediately prior to vesting in or transfer

to the Alien Property Custodian and continuously thereafter to the date of such return (without regard to purported divestments or limitations of such ownership by any government referred to in subdivision (A) hereof) and if such ownership was by one or more citizens of the United States or by one or more corporations organized under the laws of the United States or any State, Territory, or possession thereof, or the District of Columbia: *Provided further*, That such owner or owners shall succeed to those obligations, limited in aggregate amount to the value of such property or interest or proceeds, which are lawfully assertible against the corporation or association by persons not ineligible to receive a return under this section; or

(C) an individual voluntarily resident at any time since December 7, 1941, within the territory of such nation, other than a citizen of the United States or a diplomatic or consular officer of a nation with which the United States has not at any time since December 7, 1941, been at war: *Provided*, That an individual who, while in the territory of a nation with which the United States has at any time since December 7, 1941, been at war, was deprived of life or substantially deprived of liberty pursuant to any law, decree or regulation of such nation discriminating against political, racial or religious groups, shall not be deemed to have voluntarily resided in such territory; or

(D) an individual who was at any time after December 7, 1941, a citizen or subject of a nation with which the United States has at any time since December 7, 1941, been at war, and who on or after December 7, 1941, and prior to the date of the enactment of this section, was present (other than in the service of the United States) in the territory of such nation or in any territory occupied by the military or naval forces thereof or engaged in any business in any such territory: *Provided*, That notwithstanding the provisions of this subdivision (D), return may be made to an individual who, as a consequence of any law, decree or regulation of the nation of which he was then a citizen or subject, discriminating against political, racial or religious groups, has at no time between December 7, 1941, and the time when such law, decree or regulation was abrogated, enjoyed full rights of citizenship under the law of such nation; or

(E) a foreign corporation or association which at any time after December 7, 1941, was controlled or 50 per centum or more of the stock of which was owned by any person or persons ineligible to receive a return under subdivisions (A), (B), (C), or (D) hereof: *Provided*, That notwithstanding the provisions of this subdivision (E) a return may be made to a corporation or association so controlled or owned, if such corporation or association was organized under the laws of a nation any of whose territory was

occupied by the military or naval forces of any nation with which the United States has at any time since December 7, 1941, been at war, and if such control or ownership arose after March 1, 1938, as an incident to such occupation and was terminated prior to the enactment of this section;

and

(3) that the property or interest claimed, or the net proceeds of which are claimed, was not at any time after September 1, 1939, held or used, by or with the assent of the person who was the owner thereof immediately prior to vesting in or transfer to the Alien Property Custodian, pursuant to any arrangement to conceal any property or interest within the United States of any person ineligible to receive a return under subsection (a) (2) hereof;

(4) that the Alien Property Custodian has no actual or potential liability under the Renegotiation Act or the Act of October 31, 1942 (56 Stat. 1013; 35 U. S. C. 89–96), in respect of the property or interest or proceeds to be returned and that the claimant and his predecessor in interest, if any, have no actual or potential liability of any kind under the Renegotiation Act or the said Act of October 31, 1942; or in the alternative that the claimant has provided security or undertakings adequate to assure satisfaction of all such liabilities or that property or interest or proceeds to be retained by the Alien Property Custodian are adequate therefor; and

(5) that such return is in the interest of the United States.

Tucker Act, Judicial Code, § 24 (20), § 145 (1); 28 U. S. C. 41 (20), § 250 (1):

> SEC. 24:
>
> The district courts shall have original jurisdiction as follows:
>
> * * * * *
>
> (20) Suits against United States.
>
> Twentieth. Concurrent with the Court of Claims, of all claims not exceeding $10,000 founded upon the Constitution of the United States or any law of Congress, or upon any regulation of an executive department, or upon any contract, express or implied, with the Government of the United States * * *.
>
> SEC. 145:
>
> The Court of Claims shall have jurisdiction to hear and determine the following matters:
>
> (1) Claims against United States.
>
> First. All claims (except for pensions) founded upon the Constitution of the United States or any law of Congress, upon any regulation of an executive department, upon any contract, express or implied, with the Government of the United States. * * *.
>
> * * * * *

Executive Order No. 8785, June 14, 1941, 6 F. R. 2897, as amended by Executive Order No. 8832, July 26, 1941, 6 F. R. 3715:

> * * * * *
>
> Executive Order No. 8389 of April 10, 1940, as amended, is amended to read as follows:
>
> * * * * *
>
> SECTION 3. The term "foreign country designated in this Order" means a foreign

country included in the following schedule, and the term "effective date of this Order" means with respect to any such foreign country, or any national thereof, the date specified in the following schedule:

(a) April 8, 1940—
Norway and
Denmark;

(b) May 10, 1940—
The Netherlands,
Belgium and
Luxembourg;

(c) June 17, 1940—
France (including Monaco);

(d) July 10, 1940—
Latvia,
Estonia and
Lithuania;

(e) October 9, 1940—
Rumania;

(f) March 4, 1941—
Bulgaria;

(g) March 13, 1941—
Hungary;

(h) March 24, 1941—
Yugoslavia;

(i) April 28, 1941—
Greece;

(j) June 14, 1941—
Albania,
Andorra,
Austria,
Czechoslovakia,
Danzig,
Finland,
Germany,
Italy,
Liechtenstein,
Poland,
Portugal,

San Marino,
Spain,
Sweden,
Switzerland, and
Union of Soviet Socialist Republics;

(k) June 14, 1941—
China, and
Japan.

The "effective date of this Order" with respect to any foreign country not designated in this Order shall be deemed to be June 14, 1941.

* * * * *

SECTION 5.

* * * * *

E. The term "national" shall include,

(i) Any person who has been domiciled in, or a subject, citizen or resident of a foreign country at any time on or since the effective date of this Order,

(ii) Any partnership, association, corporation or other organization, organized under the laws of, or which on or since the effective date of this Order had or has had its principal place of business in such foreign country, or which on or since such effective date was or has been controlled by, or a substantial part of the stock, shares, bonds, debentures, notes, drafts, or other securities or obligations of which, was or has been owned or controlled by, directly or indirectly, such foreign country and/or one or more nationals thereof as herein defined,

(iii) Any person to the extent that such person is, or has been, since such effective date, acting or purporting to act directly or indirectly for the benefit or on behalf of any national of such foreign country, and

(iv) Any other person who there is reasonable cause to believe is a "national" as herein defined.

Executive Order No. 9095, March 11, 1942, 7 F. R. 1971:

* * * * * *

2. All power and authority conferred on the President by Sections 3 (a) and 5 (b) of the Trading with the Enemy Act of October 6, 1917, as amended, and by Sections 301 and 302 of Title III of the First War Powers Act, 1941, approved December 18, 1941, except such powers and authority as were delegated to the Secretary of the Treasury by Executive Orders issued prior to February 12, 1942, and to the Board of Governors of the Federal Reserve System by Executive Order No. 8843 of August 9, 1941 (which powers and authority shall continue to be vested in and exercised by the Secretary of the Treasury and the Board of Governors respectively), are hereby delegated to and vested in the Alien Property Custodian. The memorandum of February 12, 1942, delegating to the Secretary of the Treasury certain powers and authority under said sections, is hereby revoked and canceled. * * *

3. Any property, or interest therein, of any foreign country or a national thereof shall vest in the Alien Property Custodian whenever the Alien Property Custodian shall so direct; and, in the case of any property, or interest therein, subject to the control of the Secretary of the Treasury, when the Alien Property Custodian shall notify the Secretary of the Treasury in writing that he has so directed, the Secretary of the Treasury shall release all con-

trol of any such property, or interest therein, to the Alien Property Custodian.

4. Any outstanding order, proclamation, regulation, ruling, license, or instruction issued pursuant to, or relating to the administration of, any power or authority vested in the Alien Property Custodian by this Order shall remain in effect unless and until amended or revoked by the Alien Property Custodian.

Executive Order No. 9193, July 6, 1942, 7 F. R. 5205:

* * * * * *

Executive Order No. 9095 of March 11, 1942, is amended to read as follows:

* * * * * *

2. The Alien Property Custodian is authorized and empowered to take such action as he deems necessary in the national interest, including, but not limited to, the power to direct, manage, supervise, control or vest, with respect to:

(a) any business enterprise within the United States which is a national of a designated enemy country and any property of any nature whatsoever owned or controlled by, payable or deliverable to, held on behalf of or on account of or owing to or which is evidence of ownership or control of any such business enterprise, and any interest of any nature whatsoever in such business enterprise held by an enemy country or national thereof;

(b) any other business enterprise within the United States which is a national of a foreign country and any property of any nature whatsoever owned or controlled by, payable or deliverable to, held on behalf of or on account of or owing to or which is

evidence of ownership or control of any such business enterprise, and any interest of any nature whatsoever in such business enterprise held by a foreign country or national thereof, when it is determined by the Custodian and he has certified to the Secretary of the Treasury that it is necessary in the national interest, with respect to such business enterprise, either (i) to provide for the protection of the property, (ii) to change personnel or supervise the employment policies, (iii) to liquidate, reorganize, or sell, (iv) to direct the management in respect to operations, or (v) to vest;

(c) any other property within the United States owned or controlled by a designated enemy country or national thereof, not including in such other property, however, cash, bullion, moneys, currencies, deposits, credits, credit instruments, foreign exchange and securities except to the extent that the Alien Property Custodian determines that such cash, bullion, moneys, currencies, deposits, credits, credit instruments, foreign exchange and securities are necessary for the maintenance or safeguarding of other property belonging to the same designated enemy country or the same national thereof and subject to vesting pursuant to section 2 hereof;

(d) any patent, patent application, design patent, design patent application, copyright, copyright application, trademark or trademark application or right related thereto in which any foreign country or national thereof has any interest and any property of any nature whatsoever (including, without limitation, royalties and license fees) payable or held with respect

thereto, and any interest of any nature whatsoever held therein by any foreign country or national thereof;

(e) any ship or vessel or interest therein, in which any foreign country or national thereof has an interest; and

(f) any property of any nature whatsoever which is in the process of administration by any person acting under judicial supervision or which is in partition, libel, condemnation or other similar proceedings and which is payable or deliverable to, or claimed by, a designated enemy country or national thereof.

When the Alien Property Custodian determines to exercise any power and authority conferred upon him by this section with respect to any of the foregoing property over which the Secretary of the Treasury is exercising any control and so notifies the Secretary of the Treasury in writing, the Secretary of the Treasury shall release all control of such property, except as authorized or directed by the Alien Property Custodian.

3. Subject to the provision of this Executive Order, all powers and authority conferred upon me by sections 3 (a) and 5 (b) of the Trading with the enemy Act, as amended, are hereby delegated to the Secretary of the Treasury or any person, agency, or instrumentality designated by him; *provided, however,* that when any property or interest, not belonging to a foreign government or central bank, shall be vested by the Secretary of the Treasury, such property or interest shall be vested in, and dealt with by, the Alien Property Custodian upon the terms directed by the Secretary of the Treasury. Except as otherwise provided herein, this Executive Order shall not be

deemed to modify or amend Executive Order No. 8389, as amended, or the President's Proclamation of July 17, 1941, or Executive Order No. 8839, as amended, or the regulations, rulings, licenses and other action taken thereunder, or in connection therewith.

4. Without limitation as to any other powers or authority of the Secretary of the Treasury or the Alien Property Custodian under any other provision of this Executive Order, the Secretary of the Treasury and the Alien Property Custodian are authorized and empowered, either jointly or severally, to prescribe from time to time, regulations, rulings, and instructions to carry out the purposes of this Executive Order. The Secretary of the Treasury and the Alien Property Custodian each shall make available to the other all information in his files to enable the other to discharge his functions, and shall keep each other currently informed as to investigations being conducted, with respect to enemy ownership or control of business enterprises within the United States.

* * * * * * *

6. To enable the Alien Property Custodian to carry out his functions under this Executive Order, there are hereby delegated to the Alien Property Custodian or any person, agency or instrumentality designated by him all powers and authority conferred upon me by section 5 (b) of the Trading with the enemy Act, as amended, including, but not limited to, the power to make such investigations and require such reports as he deems necessary or appropriate to determine whether any enterprise or property should be subject to his jurisdiction and control under this Executive

Order. The powers and authority conferred upon the Alien Property Custodian by Executive Order No. 9142 shall be administered by him in conformity with the provisions of this Executive Order.

* * * * *

8. All records and other property (including office equipment) of the Treasury Department which are used primarily in the administration of powers and duties to be exercised by the Alien Property Custodian, and such personnel as is used primarily in the administration of such powers and duties and which was hired by the Treasury Department after September 1, 1941 (including officers whose chief duties relate to the administration of such powers and duties), as the Secretary of the Treasury and the Alien Property Custodian shall jointly certify for transfer, shall be transferred to the Office of the Alien Property Custodian. In the event of disagreement concerning the transfer of any personnel, records, or property, the determination shall be made by the Director of the Bureau of the Budget, pursuant to the formula here prescribed. * * *

9. This Executive Order shall not be deemed to modify or amend Executive Order No. 8843 of August 9, 1941, and the regulations, rulings, licenses and other action taken thereunder. Any and all action heretofore taken by the Secretary of the Treasury or the Alien Property Custodian, or by any person, agency, or instrumentality designated by either of them, pursuant to sections 3 (a) and 5 (b) of the Trading with the enemy Act, as amended, or pursuant to prior Executive Orders, and any and all action heretofore taken by the Board of Governors of the Federal Reserve System pursuant to Executive Order No.

8843 of August 9, 1941, are hereby confirmed and ratified.

10. For the purpose of this Executive Order:

(a) The term "designated enemy country" shall mean any foreign country against which the United States has declared the existence of a state of war (Germany, Italy, Japan, Bulgaria, Hungary and Rumania) and any other country with which the United States is at war in the future. The term "national" shall have the meaning prescribed in section 5 of Executive Order No. 8389, as amended, *provided, however,* that persons not within designated enemy countries (even though they may be within enemy-occupied countries or areas) shall not be deemed to be nationals of a designated enemy country unless the Alien Property Custodian determines: (i) that such person is controlled by or acting for or on behalf of (including cloaks for) a designated enemy country or a person within such country; or (ii) that such person is a citizen or subject of a designated enemy country and within an enemy-occupied country or area; or (iii) that the national interest of the United States requires that such person be treated as a national of a designated enemy country. For the purpose of this Executive Order any determination by the Alien Property Custodian that any property or interest of any foreign country or national thereof is the property or interest of a designated enemy country or national thereof shall be final and conclusive as to the power of the Alien Property Custodian to exercise any of the power or authority conferred upon me by section 5 (b) of the Trading with the enemy Act, as amended.

(b) The term "business enterprise within the United States" shall mean any individual proprietorship, partnership, corporation or other organization primarily engaged in the conduct of a business within the United States, and any other individual proprietorship, partnership, corporation or other organization to the extent that it has an established office within the United States engaged in the conduct of business within the United States.

* * * * * *

12. Any orders, regulations, rulings, instructions, licenses or other actions issued or taken by any person, agency or instrumentality referred to in this Executive Order, shall be final and conclusive as to the power of such person, agency or instrumentality to exercise any of the power or authority conferred upon me by sections 3 (a) and 5 (b) of the Trading with the enemy Act, as amended; and to the extent necessary and appropriate to enable them to perform their duties and functions hereunder, the Secretary of the Treasury and the Alien Property Custodian shall be deemed to be authorized to exercise severally any and all authority, rights, privileges and powers conferred on the President by sections 3 (a) and 5 (b) of the Trading with the enemy Act of October 6, 1917, as amended, and by sections 301 and 302 of Title III of the First War Powers Act, 1941, approved December 18, 1941. No persons affected by any order, regulation, ruling, instruction, license or other action issued or taken by either the Secretary of the Treasury or the Alien Property Custodian shall be entitled to challenge the validity thereof or otherwise

excuse his actions, or failure to act, on the ground that pursuant to the provisions of this Executive Order, such order, regulation, ruling, instruction, license or other action was within the jurisdiction of the Alien Property Custodian rather than the Secretary of the Treasury or vice versa.

13. Any regulations, rulings, instructions, licenses, determinations or other actions issued, made or taken by any agency or person referred to in this Executive Order, purporting to be under the provisions of this Executive Order or any other proclamation, order or regulation, issued under sections 3 (a) or 5 (b) of the Trading with the enemy Act, as amended, shall be conclusively presumed to have been issued, made or taken after appropriate consultation as herein required and after appropriate certification in any case in which a certification is required pursuant to the provisions of this Executive Order.

APPENDIX B

Treaty of November 25, 1850 with Switzerland, 11 Stat. 587:

ARTICLE I

The citizens of the United States of America and the citizens of Switzerland shall be admitted and treated upon a footing of reciprocal equality in the two countries, where such admission and treatment shall not conflict with the constitutional or legal provisions, as well federal as State and cantonal, of the contracting parties. The citizens of the United States and the citizens of Switzerland, as well as the members of their families, subject to the constitutional and legal provisions aforesaid, and yielding obedience to the laws, regulations, and usages of the country wherein they reside, shall be at liberty to come, go, sojourn temporarily, domiciliate or establish themselves permanently, the former in the cantons of the Swiss Confederation, the Swiss in the States of the American Union, to acquire, possess, and alienate therein property, (as is explained in article V;) to manage their affairs; to exercise their profession, their industry, and their commerce; to have establishments; to possess warehouses; to consign their products and their merchandise, and to sell them by wholesale or retail, either by themselves or by such brokers or other agents as they may think proper; they shall have free access to the tribunals, and shall be at liberty to prosecute and defend their rights

before courts of justice in the same manner as native citizens, either by themselves or by such advocates, attorneys, or other agents as they may think proper to select. No pecuniary or other more burdensome condition shall be imposed upon their residence or establishment, or upon the enjoyment of the above-mentioned rights, than shall be imposed upon citizens of the country where they reside, nor any condition whatever to which the latter shall not be subject.

* * * * *

ARTICLE II

* * * * *

In case of war, or of expropriation for purposes of public utility, the citizens of one of the two countries, residing or established in the other, shall be placed upon an equal footing with the citizens of the country in which they reside with respect to indemnities for damages they may have sustained.

* * * * *

Letter from the Acting Secretary of State (Phillips) to the Swiss Minister (Peter), January 3, 1934, M. S. Department of State, file 811.5034/157, as quoted in III Hackworth, *Digest of International Law*, 431–2:

* * * It is the view of this Government that the provision of the treaty referred to above [Article II, paragraph 2, of the treaty of friendship and commerce between the United States and Switzerland signed Nov. 25, 1850] has no application to corporations. Consequently, no conflict may arise between the tax imposed by Section 213 of

the National Industrial Recovery Act and the provisions of the treaty.

* * * * * *

An examination of the language of the 1850 treaty clearly shows that the use of the word "citizen" did not contemplate that the term should include corporations. For example, in Article I of the treaty the word "citizen" is used as follows:

"The citizens of the United States and the citizens of Switzerland, as well as the members of their families * * *."

Citizens are given the liberty to "exercise their profession." The privileges conferred on citizens by Article I "shall not extend to the exercise of political rights."

Article II of the treaty provides in the first paragraph that "the citizens of one of the two countries, residing or established in the other, shall be free from personal military service."

Obviously, these references to "citizen" in Articles I and II are to natural persons and they could have no application to corporations. The term "citizens" as used in Articles III, IV and V could apply only to natural persons.

It would indeed be a strained interpretation to contend that the term "citizens" has a different and broader meaning in the second paragraph of Article II than it obviously has in Articles I, III, IV and V and in the first paragraph of Article II.

It is believed to be clear from the language of the treaty that corporations are not included within the scope of the term "citizens" which appears in the second paragraph of Article II. Since the question has been raised, however, as to the manner in which treaties should be interpreted, it may be observed that specific

reference is not made to corporations in Article II of the treaty. An examination of the correspondence leading to the conclusion of the treaty fails to reveal any reference to corporations. Until comparatively recent years American interests in foreign countries and foreign interests in the United States were almost wholly those of natural persons rather than of corporations. In the middle of the Nineteenth Century it was not the practice to incorporate provisions regarding corporations in treaties concluded by the United States with foreign governments.

A number of treaties entered into by the United States in recent years contain limited provisions regarding corporations. Under these treaties, corporations are regarded as having only such privileges as are specifically prescribed for them. They are not regarded as deriving from these treaties privileges granted to citizens generally.

For example, in the Treaty of Friendship, Commerce and Consular Rights between the United States and Germany, signed December 8, 1923, provisions regarding corporations have been dealt with under separate articles, rather than assimilating corporate treaty rights to those of natural persons. Reference is made to Articles XII and XIII of the treaty with Germany.

It has been deemed inadvisable to grant in treaties the same privileges to corporations as are granted to natural persons, because it is within the power of the several states in the United States to prescribe the conditions on which foreign corporations may do business within the states. It has not generally been considered desirable to limit the powers of the state in such matters by treaty.

APPENDIX C

VESTING ORDER NUMBER 14

VESTING CERTAIN SHARES OF STOCK OF SPUR DISTRIBUTING CO. INC.

Under the authority of Section 5 (b) of the Trading with the Enemy Act of October 6, 1917, as amended by Sec. 301 of the First War Powers Act, 1941, and pursuant to Executive Order No. 9095 of March 11, 1942, the undersigned, finding upon investigation that 73,039 shares of the common stock of Spur Distributing Co. Inc. (a Delaware corporation) registered in the name of Houvis & Co. and deposited with American National Bank, Nashville, Tennessee as collateral for a loan made to Fritz von Opel are the property of Nationals of a Foreign Country designated in Executive Order No. 8389, as amended, as defined therein, and that the action herein taken is in the public interest, hereby directs that such property including any and all interest therein shall be and the same hereby is vested in the Alien Property Custodian, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

Such property and any or all of the proceeds thereof shall be held in a special account pending further determination of the Alien Property Custodian. This shall not be deemed to limit the power of the Alien Property Custodian to return such property or the proceeds thereof, or to

indicate that compensation will not be paid in lieu thereof, if and when it should be determined that such return or compensation should be made.

Any person not a national of a foreign country designated in Executive Order No. 8389, as amended, claiming any interest in any or all of such property and/or any person asserting any claim as a result of this order may file with the Alien Property Custodian a notice of his claim, together with a request for a hearing thereon, on Form No. APC–1 within one year from the date of this order, or within such further time as may be allowed by the Alien Property Custodian.

Executed at Washington, D. C. on June 4, 1942.

(Signed) Leo T. Crowley,
LEO T. CROWLEY,
Alien Property Custodian.

[F. R. Doc. 42-5408; Filed, June 9, 1942; 2:54 p. m.]
[7 F. R. 4399 (Number 114, June 11, 1942)]

AMENDATORY AND SUPPLEMENTAL ORDER NUMBER 1 TO VESTING ORDER NUMBER 14

RE: SPUR DISTRIBUTING CO., INC.

First

Under the authority of the Trading with the enemy Act, as amended, and the authority vested by the President in the Alien Property Custodian, and pursuant to law, the Alien Property Custodian:

(A) On June 4, 1942, issued Vesting Order Number 14 (7 F. R. 4399) finding that 73,039 shares of the common stock of Spur Distributing Co., Inc., (a Delaware corporation) registered in

the name of Houvis & Co., and deposited with American National Bank, Nashville, Tennessee, as collateral for a loan made to Fritz von Opel, was the property of Nationals of a Foreign Country, as defined in Executive Order No. 8389, as amended, and declaring that such property including any and all interest therein was vested in the Alien Property Custodian;

(B) Hereby amends Vesting Order Number 14 as follows and not otherwise by finding and determining that the "Nationals of a Foreign Country" therein mentioned were at the time of the vesting and now are Wilhelm von Opel, Marta von Opel, Uebersee Finanz-Korporation, Aktien Gesellschaft, Fritz von Opel, Elinor von Opel Sachs and the issue of Elinor von Opel Sachs, and that they were and are nationals of a foreign country, namely Germany.

Second

(A) To the extent, if any, that any of the property listed in Section FIRST hereof, and full, complete and unqualified legal and equitable title, therein and thereto, was not vested in the Alien Property Custodian on June 4, 1942, by Vesting Order Number 14, the undersigned under the authority of the Trading with the enemy Act, as amended, and Executive Order No. 9095, as amended, and pursuant to law, and after investigation,

Finding:

1. That in accordance with an agreement dated October 5, 1931, signed by Wilhelm von Opel, Marta von Opel and Fritz von Opel, a usufrucht estate was created for Wilhelm and Marta von

Opel with contingent interests in Fritz von Opel and Elinor von Opel Sachs, including their issue, with a further interest in Fritz von Opel of twenty percent of the dividends and interest of the usufrucht estate;

2. That in accordance with the aforesaid agreement, dated October 5, 1931, all of the capital stock of Uebersee Finanz-Korporation, Aktien Gesellschaft, a corporation organized under the laws of Switzerland, is a part of said usufrucht estate and is therefore beneficially owned by Wilhelm and Marta von Opel, with contingent interests in Fritz von Opel, Elinor von Opel Sachs and their issue;

3. That of the total outstanding capital stock of Spur Distributing Co., Inc., a corporation organized under the laws of the State of Delaware and a business enterprise within the United States, consisting of 139,000 shares of no par value common stock, 73,039 shares (52%) registered in the name of Houvis & Co., are also a part of said usufrucht estate and are held by Uebersee Finanz-Korporation, Aktien Gesellschaft, for the benefit of said Wilhelm and Marta von Opel, Fritz von Opel, Elinor von Opel Sachs and their issue, and are evidence of control of said business enterprise;

4. That Uebersee Finanz-Korporation, Aktien Gesellschaft, is acting for or on behalf of and is controlled by Wilhelm and Marta von Opel;

5. That Wilhelm von Opel and Marta von Opel, whose last known addresses are Ruesselsheim, Germany, are nationals of a designated enemy country (Germany);

6. That Fritz von Opel, a subject of Germany and a citizen of Liechtenstein, has been interned

by order of the Attorney-General of the United States and is acting directly or indirectly for the benefit or on behalf of a designated enemy country (Germany) or persons within such country, and that said Fritz von Opel has no issue;

7. That Elinor von Opel Sachs, whose last known address was Germany, is a national of a designated enemy country (Germany);

8. That the issue of Elinor von Opel Sachs, whose last known addresses are Schweinfurt, Germany, are nationals of a designated enemy country (Germany);

and determining:

9. That Uberesee Finanz-Korporation, Aktien Gesellschaft is controlled by or acting for or on behalf of Wilhelm von Opel and Marta von Opel and is a national of a designated enemy country (Germany);

10. That Fritz von Opel is acting for or on behalf of a designated enemy country (Germany) or persons within such country and is a national of a designated enemy country (Germany);

11. That Spur Distributing Co., Inc., is controlled by or acting for on on behalf of Wilhelm von Opel and Marta von Opel and is a national of a designated enemy country (Germany);

12. That to the extent that such nationals are persons not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country (Germany);

and having made all determinations and taken all action, after appropriate consultation and cer-

tification required by law, and deeming it necessary in the national interest,

HEREBY VESTS in the Alien Property Custodian the 73,039 shares of no par value common stock of Spur Distributing Co., Inc., registered in the name of Houvis & Co., including any and all interest therein, together with any declared and unpaid dividends thereon, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest and for the benefit of the United States.

(B) Such property so vested by paragraph (A) of this Section SECOND and any or all of the proceeds thereof shall be held in an appropriate account or accounts, pending further determination of the Alien Property Custodian. This order shall not be deemed to limit the power of the Alien Property Custodian to return such property or the proceeds thereof in whole or in part, nor shall it be deemed to indicate that compensation will not be paid in lieu thereof, if and when it should be determined to take any one or all of such actions.

(C) Any person except a National of a Designated Enemy Country, asserting any claim arising as a result of this Amendatory and Supplemental Order may, within one year from the date hereof, or within such further time as may be allowed, file with the Alien Property Custodian on Form APC–1 a notice of claim, together with a request for a hearing thereon. Nothing herein contained shall be deemed to constitute an admission of the existence, validity or right to allowance of any such claim.

(D) The terms "National", "Designated Enemy Country" and "Business Enterprise within the United States", as used herein, shall have the meanings prescribed in Section 10 of Executive Order No. 9095, as amended.

Third

This Amendatory and Supplemental Order is corrective of and supplemental to, and in no way diminishes, restricts or limits the force and effect of, said Vesting Order Number 14, (7 F. R. 4399) and nothing herein contained shall diminish, restrict or limit any rights, titles or interests vested in the undersigned, as Alien Property Custodian, pursuant to said Vesting Order Number 14.

Executed at Washington, D. C. on July 11, 1944.

[OFFICIAL SEAL]

(Signed) James E. Markham,
JAMES E. MARKHAM,
Alien Property Custodian.

[F. R. Doc. 44-10576; Filed, July 17, 1944; 10:54 a. m.]
[9 Fed. Reg. 8083 (July 18, 1944)]

VESTING ORDER NUMBER 17

VESTING 345,760 SHARES OF THE COMMON STOCK OF HARVARD BREWING COMPANY

Under the authority of Section 5 (b) of the Trading with the Enemy Act of October 6, 1917, as amended by Sec. 301 of the First War Powers Act, 1941, and pursuant to Executive Order No. 9095 of March 11, 1942, the undersigned, finding upon investigation that the property hereinafter

described is the property of Nationals of a Foreign Country designated in Executive Order No. 8389, as amended, as defined therein, and that the action herein taken is in the public interest, hereby directs that such property including any and all interest therein shall be and the same hereby is vested in the Alien Property Custodian, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States; such property being described as follows:

345,760 shares of the common stock of Harvard Brewing Company (a Delaware corporation) registered and held in the following manner:

a. 125,000 shares registered in the name of Sigler & Company and deposited with Central Hanover Bank and Trust Company, 70 Broadway, New York, New York;

b. 109,000 shares registered in the name of and deposited with Dominick & Dominick, 115 Broadway, New York, New York;

c. 56,760 shares registered in the name of Lake and Company and deposited with Manufacturers Trust Company, 55 Broad Street, New York, New York; and

d. 55,000 shares registered in the name of Cudd and Company and deposited with The Chase National Bank of the City of New York, New York, New York;

all of the aforesaid 345,760 shares being held for the account of Arnold & S. Bleichroeder, Inc.

Such property and any or all of the proceeds thereof shall be held in a special account pending further determination of the Alien Property Custodian. This shall not be deemed to limit the powers of the Alien Property Custodian to return

such property or the proceeds thereof, or to indicate that compensation will not be paid in lieu thereof, if and when it should be determined that such return or compensation should be made.

Any person not a national of a foreign country designated in Executive Order No. 8389, as amended, claiming any interest in any or all of such property and/or any person asserting any claim as a result of this order may file with the Alien Property Custodian a notice of his claim, together with a request for a hearing thereon, on Form No. APC–1 within one year from the date of this order, or within such further time as may be allowed by the Alien Property Custodian.

Executed at Washington, D. C., on June 4, 1942.

(Signed) Leo T. Crowley,
LEO T. CROWLEY,
Alien Property Custodian.

[F. R. Doc. 42-5411; Filed, June 9, 1942; 2:55 p. m.]
[7 F. R. 4402 (Number 114, June 11, 1942)]

AMENDMENT OF VESTING ORDER NUMBER 17

Vesting Order Number 17 of June 4, 1942 is hereby amended as follows and not otherwise:

(a) By deleting the figure "125,000" appearing in subparagraph (a) thereof, and by substituting therefor the figure "290,760"; and by inserting the word "and" at the end of subparagraph (a) thereof.

(b) By deleting subparagraphs (b) and (c) thereof.

(c) By redesignating subparagraph (d) thereof as subparagraph (b).

All other provisions of such Vesting Order Number 17 and all action taken on behalf of the undersigned in reliance thereon, pursuant thereto and under the authority thereof are hereby ratified and confirmed.

Executed at Washington, D. C. on August 6, 1942.

(Signed) Leo T. Crowley,
LEO T. CROWLEY,
Alien Property Custodian.

[F. R. Doc. 42-7716; Filed, August 8, 1942; 11:08 a. m.]
[7 F. R. 6190 (Number 157, August 11, 1942)]

VESTING ORDER NUMBER 18

VESTING 100 SHARES OF THE COMMON CAPITAL STOCK OF WESTMINSTER INDUSTRIAL CORPORATION

Under the authority of Section 5 (b) of the Trading With the Enemy Act of October 6, 1917, as amended by Sec. 301 of the First War Powers Act, 1941, and pursuant to Executive Order No. 9095 of March 11, 1942, the undersigned, finding upon investigation that the property hereinafter described is the property of Nationals of a Foreign Country designated in Executive Order No. 8389, as amended, as defined therein, and that the action herein taken is in the public interest, hereby directs that such property including any and all interest therein shall be and the same hereby is vested in the Alien Property Custodian, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for

the benefit of the United States; such property being described as follows:

100 shares of the common capital stock of Westminster Industrial Corporatoin (a New York corporation) held in trust by Erwin G. Schattman, 265 Cabrini Boulevard, New York, New York, for Overseas Finance Corporation, Ltd. of Liesthal, Switzerland.

Such property and any or all of the proceeds thereof shall be held in a special account pending further determination of the Alien Property Custodian. This shall not be deemed to limit the powers of the Alien Property Custodian to return such property or the proceeds thereof, or to indicate that compensation will not be paid in lieu thereof, if and when it should be determined that such return or compensation should be made.

Any person not a national of a foreign country designated in Executive Order No. 8389, as amended, claiming any interest in any or all of such property and/or any person asserting any claim as a result of this order may file with the Alien Property Custodian a notice of his claim, together with a request for a hearing thereon, on Form No. APC–1 within one year from the date of this order, or within such further time as may be allowed by the Alien Property Custodian.

Executed at Washington, D. C. on June 4, 1942.

(Signed) Leo T. Crowley,
LEO T. CROWLEY,
Alien Property Custodian.

[F. R. Doc. 42-5412; Filed, June 9, 1942; 2:55 p. m.]
[7 F. R. 4402 (Number 114, June 11, 1942)]

VESTING ORDER NUMBER 19

VESTING 300 SHARES OF THE COMMON CAPITAL STOCK OF AMERLAGENE, INC.

Under the authority of Section 5 (b) of the Trading With the Enemy Act of October 6, 1917, as amended by Sec. 301 of the First War Powers Act, 1941, and pursuant to Executive Order No. 9095 of March 11, 1942, the undersigned, finding upon investigation that the property hereinafter described is the property of Nationals of a Foreign Country designated in Executive Order No. 8389, as amended, as defined therein, and that the action herein taken is in the public interest, hereby directs that such property including any and all interest therein shall be and the same hereby is vested in the Alien Property Custodian, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States; such property being described as follows:

> 300 shares of the common capital stock of Amerlagene, Inc. (a Delaware corporation) represented by Certificates numbered 1, 2 and 3, each for 100 shares.

Such property and any or all of the proceeds thereof shall be held in a special account pending further determination of the Alien Property Custodian. This shall not be deemed to limit the powers of the Alien Property Custodian to return such property or the proceeds thereof, or to indicate that compensation will not be paid in lieu thereof, if and when it should be de-

termined that such return or compensation should be made.

Any person not a national of a foreign country designated in Executive Order No. 8389, as amended, claiming any interest in any or all of such property and/or any person asserting any claim as a result of this order, may file with the Alien Property Custodian a notice of his claim, together with a request for a hearing thereon, on Form No. APC-1 within one year from the date of this order, or within such further time as may be allowed by the Alien Property Custodian.

Executed at Washington, D. C. on June 4, 1942.

(Signed) Leo T. Crowley,
LEO T. CROWLEY,
Alien Property Custodian.

[F. R. Doc. 42-5413; Filed, June 9, 1942; 2:55 p. m.]
[7 F. R. 4403 (Number 114, June 11, 1942)]

VESTING ORDER NUMBER 36

VESTING 7,304 SHARES OF THE COMMON STOCK OF AJAX TRANSPORTATION COMPANY

Under the authority of Section 5 (b) of the Trading with the Enemy Act of October 6, 1917, as amended by Sec. 301 of the First War Powers Act, 1941, and pursuant to Executive Order No. 9095 of March 11, 1942, the undersigned, finding upon investigation that the property hereinafter described is the property of Nationals of a Foreign Country designated in Executive Order No. 8389, as amended, as defined therein, and that the action herein taken is in the public interest,

hereby directs that such property including any and all interest therein shall be and the same hereby is vested in the Alien Property Custodian, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States; such property being described as follows:

7,304 shares of the common capital stock of Ajax Transportation Company (a Missouri corporation) registered in the names of Hanns Frankenberg and Adolph Gaeng, nominees for Ubersee Finanz-Korporation, A. G. (Overseas Finance Corporation, Limited), and represented by certificate No. 15, together with all declared and unpaid dividends on the same.

Such property and any or all of the proceeds thereof shall be held in a special account pending further determination of the Alien Property Custodian. This shall not be deemed to limit the powers of the Alien Property Custodian to return such property or the proceeds thereof, or to indicate that compensation will not be paid in lieu thereof, if and when it should be determined that such return or compensation should be made.

Any person not a national of a foreign country designated in Executive Order No. 8389, as amended, claiming any interest in any or all of such property and/or any person asserting any claim as a result of this order may file with the Alien Property Custodian a notice of his claim, together with a request for a hearing thereon, on Form No. APC–1 within one year from the date of this order, or within such further time as may be allowed by the Alien Property Custodian.

Executed at Washington, D. C. on June 30, 1942.

(Signed) Leo T. Crowley,
LEO T. CROWLEY,
Alien Property Custodian.

[F. R. Doc. 42-6278; Filed, July 2, 1942; 4:19 p. m.]
[7 F. R. 5078; Number 131, July 4, 1942]

VESTING ORDER NO. 51

VESTING INTEREST OF UBERSEE FINANZ-KORPORATION, A. G., ET AL., IN CONTRACT WITH AMERLAGENE, INC.

Under the authority of the Trading with the enemy Act, as amended, and Executive Order No. 9095, as amended, and pursuant to law, the undersigned, after investigation, finding:

(a) That the property described as follows:

All right, title and interest of Ubersee Finanz-Korporation, A. G., (Overseas Finance Corporation, Limited) and/or Arnhold and S. Bleichroeder, Inc., a New York corporation, in and to that certain contract executed under date of October 18, 1940 by and between said Arnhold and S. Bleichroeder, Inc.; and Amerlagene, Inc., a Delaware corporation,

is property within the United States owned or controlled by nationals of a designated enemy country (Germany); and

(b) That the property described as follows:

All income, profits and other property heretofore accrued or which may hereafter accrue to Ubersee Finanz-Korporation, A. G., (Overseas Finance Corporation, Limited) and Arnhold and S. Bleichroeder, Inc., a New York corporation, or either of

them, by virtue of the aforesaid contract dated October 18, 1940,

is part and parcel of the property hereinbefore described in sub-paragraph (a), but determining that to the extent, if any, that it is not, it is necessary for the maintenance or safeguarding of other property [namely, that hereinbefore described in sub-paragraph (a)] belonging to the same national of the same designated enemy country and subject to vesting (and in fact vested by this order) pursuant to Section 2 of said Executive Order;

and determining that to the extent that either or both of such nationals are persons not within a designated enemy country the national interest of the United States requires that they be treated as nationals of a designated enemy country, and having made all determinations and taken all action, after appropriate consultation and certification, required by said Executive Order or Act or otherwise, and deeming it necessary in the national interest, hereby vests such property, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

Such property and any or all of the proceeds thereof shall be held in a special account pending further determination of the Alien Property Custodian. This shall not be deemed to limit the powers of the Alien Property Custodian to return such property or the proceeds thereof, or to indicate that compensation will not be paid in lieu thereof, if and when it should be determined that such return should be made or such compensation should be paid.

Any person, except a national of a designated enemy country, asserting any claim arising as a result of this order may file with the Alien Property Custodian a notice of his claim, together with a request for a hearing thereon, on Form APC–1, within one year from the date hereof, or within such further time as may be allowed by the Alien Property Custodian. Nothing herein contained shall be deemed to constiute an admission of the existence, validity or right to allowance of any such claim.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in Section 10 of said Executive Order.

Executed at Washington, D. C. on July 10, 1942.

(Signed) Leo T. Crowley,
LEO T. CROWLEY.

[F. R. Doc. 42–7887; Filed, August 13, 1942; 10:00 a. m.]
[7 F. R. 6503 (Number 162, August 18, 1942)]

U. S. GOVERNMENT PRINTING OFFICE: 1947